



# **Missouri Department of Natural Resources**

## **Clean Water Commission Water Protection Program**

### **Meeting Minutes**

**November 2, 2005**

# **MISSOURI CLEAN WATER COMMISSION MEETING**

**November 2, 2005**

**Department of Natural Resources**

**1101 Riverside Dr.**

**Jefferson City, Missouri DNR**

## **MINUTES**

### Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission  
Davis D. Minton, Commissioner, Missouri Clean Water Commission (Conference Phone)  
William A. Easley, Commissioner, Missouri Clean Water Commission  
Kristin M. Perry, Commissioner, Missouri Clean Water Commission  
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission  
Ron Hardecke, Commissioner, Missouri Clean Water Commission

Edward Galbraith, Director of Staff, Missouri Clean Water Commission  
Bill Bryan, Counsel, Missouri Clean Water Commission  
Marlene Kirchner, Secretary, Missouri Clean Water Commission

Craig Aubuchon, Washington University, St. Louis, Missouri  
George Barber, CAS Construction, Kansas City, Missouri  
Karen Bataille, Department of Conservation, Columbia, Missouri  
Stacia Bax, Department of Natural Resources, Jefferson City, Missouri  
Dorris Bender, Independence Water Pollution Control, Independence, Missouri  
Robert Brundage, Newman, Comley & Ruth, Jefferson City, Missouri  
David Casaletto, Ozarks Clean Water Company, Jefferson City, Missouri  
Jeffrey Corbin, Macon Municipal Utilities, Macon, Missouri  
Delbert Crabtree, Crabtree Country Subdivision, Warrensburg, Missouri  
Chad Davis, Trenton Municipal Utilities, Trenton, Missouri  
Allen Decker, MRWA, Gray Summit, Missouri  
Cindy DiStefano, Department of Conservation, Columbia, Missouri  
Doug Garrett, Department of Natural Resources, Jefferson City, Missouri  
Peter Goode, Department of Natural Resources, Jefferson City, Missouri  
Bart Hager, MSD, Fenton, Missouri  
Ted Heisel, MO Coalition for the Environment, St. Louis, Missouri  
John Hoagland, MRWA, Ashland, Missouri  
Bob Hentges, MPUA, Jefferson City, Missouri  
Jerry Hoffman, Kansas City Water Services Dept., Kansas City, Missouri  
Hans Holmberg, Kansas City Water Services Dept., Kansas City, Missouri  
Ginny Ismay, MMU, Marshall, Missouri  
Duane Kelly, Independence, Missouri  
Vern Kincheloe, Macon Municipal Utilities, Macon, Missouri  
Dave Kindelspire, Department of Natural Resources, Jefferson City, Missouri

Richard Laux, Department of Natural Resources, Jefferson City, Missouri  
Terry Leeds, Kansas City, Missouri  
Maxine Lipeles, Washington University, St. Louis, Missouri  
Steve Mahfood, Nature Conservancy, Jefferson City, Missouri  
Wayne Maresch, Department of Natural Resources, Jefferson City, Missouri  
Jim Mellem, Kansas City Water Services, Kansas City, Missouri  
Ken Midkiff, Sierra Club, Columbia, Missouri  
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri  
Richard Moore, Department of Natural Resources, Jefferson City, Missouri  
Dennis Murphy, Doe Run Company, Viburnum, Missouri  
Susan Myers, MSD/UAC, St. Louis, Missouri  
Malinda Overhoff, Department of Natural Resources, Jefferson City, Missouri  
Earl Pabst, Department of Natural Resources, Jefferson City, Missouri  
Caitlyn Peel, HBA, St. Louis, Missouri  
Kevin Perry, REGFORM, Jefferson City, Missouri  
Tony Petruska, USEPA, Kansas City, Kansas  
Norb Plassmeyer, Osage Solutions, Jefferson City, Missouri  
David Potthast, Department of Natural Resources, Columbia, Missouri  
John Pozzo, Ameren, St. Louis, Missouri  
Jerry Presley, MFPA, Centertown, Missouri  
Peter Price, Department of Natural Resources, Rolla, Missouri  
Roger Rector, Macon Municipal Utilities, Macon, Missouri  
Ted Salveter, City Utilities, Springfield, Missouri  
Buffy Santel, MSD, St. Louis, Missouri  
Kurt Schaefer, Department of Natural Resources, Jefferson City, Missouri  
Candy Schilling, ERC, Jefferson City, Missouri  
Philip Schroeder, Department of Natural Resources, Jefferson City, Missouri  
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri  
Dennis Stith, Shafer, Kline & Warren, Macon, Missouri  
Trent Stober, MEC Water Resources, Columbia, Missouri  
Karl Tyminski, MSD, St. Louis, Missouri  
Betty Wyse, Environmental Resources, Coalition, Jefferson City, Missouri

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13     IN THE MATTER OF:

MISSOURI DEPARTMENT OF NATURAL

RESOURCES

14

CLEAN WATER COMMISSION MEETING

15

NOVEMBER 2, 2005

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1 CHAIRMAN HERRMANN: Good morning. I'd like to  
2 welcome everyone to the November 2nd, 2005, meeting  
3 of the Missouri Clean Water Commission. Introduce  
4 to you the head table. I'm Tom Herrmann, Chairman  
5 of the Commission from St. Louis. Thank you. On my  
6 left is Ron Hardecke, Commissioner from Owensville.  
7 Next is Cosette Kelly, Commissioner from  
8 Independence and Kristin Perry, Commissioner from  
9 Bowling Green. At the end of the table is Bill  
10 Easley, Commissioner from Cassville. We have on the  
11 speaker phone participating with us Davis Minton,  
12 Commissioner from Dexter and Davis, are you with us?  
13

14 COMMISSIONER MINTON: Yes, Chairman, I am.

15 CHAIRMAN HERRMANN: Okay, good, thank you. Very  
16 appreciative of having you participate.

17 COMMISSIONER MINTON: (Inaudible) Mr. Chairman, I  
18 appreciate the Department's attempt here to allow me  
19 to participate at the meeting. My extenuating  
20 circumstances has caused me to have to remain at  
21 home, but I firmly appreciate the Department's  
22 efforts here and I - I - I'm very appreciative of  
23 that. Thank you very much.

24 CHAIRMAN HERRMANN: Great. On my right is Ed  
25 Galbraith, the Director of the program. Next is

1 Bill Bryan, Assistant Attorney General, who's  
2 assigned to the Commission for legal advice. And at  
3 the end of the table is the boss of all of us, the  
4 person who keeps it straight, Marlene Kirchner,  
5 Secretary to the Commission and Secretary to the  
6 Staff. The first item on the agenda booklet is the  
7 **approval of the minutes of the September 7th, 2005,**  
8 **meeting.** And unless there are any comments or  
9 corrections or additions, the Chair would entertain  
10 a motion to accept the minutes and enter them into  
11 the record.

12 COMMISSIONER HARDECKE: I make that motion.

13 COMMISSIONER EASLEY: Second.

14 CHAIRMAN HERRMANN: Moved and seconded. Are there  
15 any dissent? Is there any dissent? Hearing none, we  
16 can declare that as approval, is that correct, Bill?

17 Okay. (Inaudible) Under - under Tab Two in the  
18 agenda booklet is a **proposed law language for CSO's.**

19 Phil Schroeder will present the Staff presentation.

20

21 MR. SCHROEDER: Thank you, Mr. Chairman. Good  
22 morning, Commissioners. It was - it's just one day  
23 short of one year ago that the Clean Water  
24 Commission directed the Staff to begin looking at  
25 the effluent rule, with respect to how combined

1 sewer overflows would be regulated in the State of  
2 Missouri. The Clean Water Commission issued a  
3 policy statement back then basically saying to the  
4 Staff develop a rule that follows the EPA's combined  
5 sewer overflow policy and allows for communities  
6 that have combined sewer overflows to develop  
7 long-term control plans in accordance with that  
8 policy and directing the Department to review the  
9 long-term control plans in accordance with that  
10 policy. Since that directive was made, we formed a  
11 work group to look at the issue. The work group  
12 consisted of members from each of the five  
13 communities that have combined sewer overflows and  
14 also others representing other perspectives of the  
15 issue. We had a good work group, I feel. We had a  
16 lot of good discussions. Good participation. We  
17 continue to have good participation from that work  
18 group on this issue. What we're asking today is for  
19 you to begin looking at what we're proposing or what  
20 we're drafting in terms of a rule that we hope meets  
21 the Commission's concept of - of the directive that  
22 they gave us about a year ago. We're not asking for  
23 any action from you today. We're not asking you to  
24 adopt this language. We're not asking you to make  
25 any decisions today, but certainly any advice that

1   you can give us with respect to how you feel in - in  
2   towards the direction that we're heading would be  
3   helpful. In your directive, you asked that a rule  
4   be developed so it can be filed with the Secretary  
5   of State's Office by next month. Depending on what  
6   we're going to have to do with respect to Regulatory  
7   Impact Report, that may be a difficult goal for us  
8   to meet if the Regulatory Impact Report is, in fact,  
9   needed and has to go through a sixty-day comment  
10   period by statute, it may be difficult to have that  
11   rule ready for filing so something else you may want  
12   to consider in terms of where we are in that  
13   schedule that you've outlined for us. Well, what  
14   I'd like to do is just kind of go through the rule -  
15   the draft rule that we've - we've put together for  
16   you. Kind of explain it to you and - and certainly  
17   give you every opportunity to make comments or ask  
18   questions of us. I say "us" because there's a lot  
19   of the members of the work group in the audience  
20   today that could possibly help me in answering some  
21   of the questions that you have if you have any. But  
22   under Tab Two of your booklet, and I've got it as  
23   Page Two Eighteen, starts the language of the draft  
24   combined sewer overflow rule. The first portion



25 deals with definitions. We felt that it was

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1 necessary that we have definitions of two - two  
2 phrases, if you will. One being combined sewer  
3 overflows and what that meant in terms of the  
4 context of this rule and also what a combined sewer  
5 system meant in the context of this rule. We've  
6 taken the simpler route here as simply adopting EPA  
7 definitions straight from their own guidance at  
8 their own regulations. So, we've not deviated it at  
9 any way from what EPA considers as the proper  
10 definitions for these terms. Under the effluent  
11 regulations of this - of the State's rules, we  
12 created a new section, which we're going to call  
13 Section Ten. What we're hoping to do there is  
14 provide a rule that's very specific and only  
15 specific to - to looking at combined sewer  
16 overflows. It's a kind of a unique situation. If  
17 you read the National CSO policy, you understand  
18 that EPA, at least at the Federal level, they look  
19 at CSO's a little differently in terms of how they  
20 effect waters of the state and how they're to be  
21 handled and how they're to be addressed. So we  
22 wanted to create a stand-alone section in the rule  
23 that it's - it sends the message clearly that we  
24 look at these issues differently than other

25 discharges to the waters of the state. The

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1 remaining sections of the effluent regulations would  
2 not apply to CSO's and only Section Ten would apply  
3 to CSO's and CSO's is the only thing affected by  
4 Section - the new Section Ten as we've proposed it.  
5 The first portion of Section Ten under Subsection A,  
6 simply refers to the fact that the permitting and  
7 control of CSO's would follow the CSO - the National  
8 CSO policy making it clear that what we've  
9 structured here is a rule that's tied directly to  
10 that policy and so with this sort of language as the  
11 national policy changes, we may have to come back  
12 and take further look at whether or not we want to  
13 continue this rule as written, but that's what we've  
14 had it - that's what our intention is. To make sure  
15 that everyone understands that, basically, this rule  
16 rests on the terms and conditions of the EPA  
17 National CSO policy. Subsection B starts a process  
18 of looking at language that's more specific to  
19 Missouri and there's some things that the CSO policy  
20 kind of leaves short that we think is necessary at a  
21 state level to be able to make sure implementation  
22 goes smoothly. One of that thing - one of those  
23 things is what do we put in a permit? How do we

24 craft a permit to - to make sure that the terms and  
25 conditions of the control of CSO's can be readily

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1 written into permits? One of the things that has to  
2 be considered is schedules. How quickly do we get  
3 about this business of developing long-term control  
4 plans and implementing those plans? And in this  
5 Subsection B, you'll find language with respect to  
6 requiring that each owner/operator of a combined  
7 sewer system develop a long-term control plan within  
8 a specified period of time. The first requirement  
9 that within six months of the effective date of this  
10 rule, that they begin implementing what we call nine  
11 minimum control measures. And basically in within  
12 those six months, we would expect the communities to  
13 define all of their CSO outfall points. To be able  
14 to clearly understand where all of their discharges  
15 from CSO's are occurring and to what extent and be  
16 able to implement nine minimum control measures on  
17 those outfalls as quickly as possible. Subsection B  
18 begins the discussion about how we're going to get  
19 the long-term control plan developed and  
20 implemented. Now, the difference between the nine  
21 minimum control measures and the long-term control  
22 plan is the nine minimum control measures basically  
23 is - is some things that can be implemented fairly

24 quickly in terms of doing assessments of CSO's and  
25 doing some immediate best management practices and

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1 to control those - I'm sorry.  
2 MR. GALBRAITH: I need to interrupt for a second,  
3 Phil, I'm sorry. For housekeeping issues, there's a  
4 - there's a Nissan, greenish gray that's  
5 parked in the drive and it's in danger of being  
6 towed. So, if that's your car, you may want to get  
7 up now and - and park it elsewhere and the rest of  
8 us will all keep our eyes down as you get up and  
9 leave the room to do that. Thanks. Sorry for the  
10 interruption, Phil.  
11 MR. SCHROEDER: I'm glad I don't have to leave at  
12 the moment.  
13 MR. GALBRAITH: I'm pretty sure that's not Davis'  
14 car.  
15 MR. SCHROEDER: Anyway, I was trying to explain that  
16 there's sort of a two-phased process of implementing  
17 the CSO policy. One is to get the nine minimum  
18 control measures underway right away and that's  
19 doing some immediate best management practices.  
20 Trying to take the first actions that can be taken  
21 easily by any community that have these - these  
22 problems to start to address the CSO's. Long-term

23 issue of developing the long-term control plan  
24 implementing it is under a different schedule. And  
25 this rule currently provides up to two years to

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1 develop a long-term control plan and to begin  
2 implementation of it and get it into permit. That's  
3 all described under Subsection C. There's one  
4 aspect that we discussed at real length and I  
5 promised our work group that I would mention this  
6 because it's really an outstanding issue with us  
7 and, certainly, would seek any advice from the  
8 Commission on this issue and that is should there be  
9 an overall timeline of accomplishing what the  
10 long-term control plans are meant to accomplish and  
11 that is achieving water quality standards? When you  
12 talk to each community about how long do you think  
13 it's going to take in order for you to develop a  
14 long-term control plan implemented and get your  
15 discharges to the point that they can meet water  
16 quality standards, I don't think any of them,  
17 perhaps for maybe one community, could tell you  
18 within a certain timeframe that that can be done.  
19 And it might range from five years to sixty. We're  
20 just not certain. Some communities face a much  
21 larger issue with respect to controlling CSO's than  
22 other communities. We have different sizes of

23 communities. Different - different amounts of CSO  
24 occurring in different communities, but there's a  
25 stated need in the work group. There's a

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1 perspective that's very important to some of our  
2 members saying that we need a long-term overall goal  
3 and it was suggested that a twenty-year deadline be  
4 placed in the regulation. Now, those that support  
5 that twenty-year overall timeframe also state that  
6 there may be an opportunity - or should be an  
7 opportunity to go beyond that if there's a social  
8 economic - demonstrated social economic need to  
9 exceed that long-term or overall goal. We have  
10 discussed that issue to the length that we feel like  
11 we really aren't making much progress in trying to  
12 bring people together on that issue. We'd like to  
13 get to a point of either consensus or informed  
14 consent, if you will, on that particular issue, but  
15 we've just not been able to do that. So, I guess  
16 we're here today partly because we feel that that's  
17 one of several issues that we would certainly  
18 appreciate your help on. And if you have some  
19 strong feelings as with - with respect to whether or  
20 not there should be a long-term goal - long-term  
21 deadline, if you will, placed in the CSO rule, now's

22 a good time for you to tell us so we can go ahead  
23 and proceed and get through that. I might ask - I  
24 might tell you that if we don't get advice from you  
25 today, which is fine. We understand. This - this

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1 issue's just being presented to you. We are willing  
2 to go back and - and discuss this further in the  
3 work group or we may feel that maybe we're ready to  
4 go ahead and - and ask the Commission to let us file  
5 this so that we can bring closure to these issues  
6 during the rulemaking process, which, of course,  
7 encompasses a public participation process in  
8 itself. But we feel that because we're not making a  
9 whole lot of progress on some of these issues -  
10 remaining issues and that your deadline that you  
11 gave us is coming to a close, we need to - we need  
12 to ask for your assistance in - in trying to bring  
13 closure to that issue. The Section D is a section  
14 that we placed into this rule to help us understand  
15 the fact that the long-term control plans need to be  
16 flexible. They need to change as conditions change  
17 in the communities because there's a couple of  
18 things that are important under the National CSO  
19 policy. One is that it has to have an element of  
20 continual improvement, if you will, but as we find  
21 new technologies to address the CSO's or we find new

22 ways or new funding mechanisms, if you will, to  
23 address the CSO's. We need to take advantage of  
24 those so that the maximum extent practicable can be  
25 achieved in the elimination of the CSO's or bring in

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1 CSO's within water quality standards. So this  
2 allows the Department to review the long-term  
3 control plans on a regular basis and try to compel  
4 some changes to those long-term control plans to  
5 make modifications to the permit as necessary to  
6 ensure that continual improvement is made toward  
7 achieving maximum (inaudible) practicable toward the  
8 elimination of the CSO's or achieving water quality  
9 standards. Subsection E is a statement in the rule  
10 that basically helps establish the fact that the CSO  
11 rule is really unique in itself. As I mentioned  
12 earlier, that persons should not try to find other  
13 regulations or other effluent regulations to apply  
14 toward the control of CSO usage. You should  
15 strictly look at Section Ten in finding what you  
16 need to help you decide what is required in - in the  
17 control of CSO's. It reads, "Compliance with the  
18 nine minimum control measures, long-term control  
19 plan development and implementation obligations  
20 herein, shall constitute full compliance with this



21 rule on controlling CSO's." This is a phrase that  
22 has a lot of debate currently, too, within the work  
23 group. Some feel that this phrase ties the  
24 regulatory flexibility, if you will, of the  
25 Department and the Commission in terms of how we

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1 address CSO's. Some people feel that the rulemaking  
2 and our process of looking at CSO's should be very  
3 adaptive in terms of having many tools, many  
4 different ways of a regulatory program and  
5 addressing those and this tends to tie that down a  
6 little too much. Others, mainly municipalities,  
7 feel this is essential in the rule because it gives  
8 them more of a stable outlook on how the Department  
9 and how the Commission will be viewing their efforts  
10 in the control of CSO's. We all understand that  
11 CSO's is going to take an enormous amount of effort.

12 It's going to be enormously expensive and  
13 communities are going to be stretched to try and  
14 bring these issues under - into compliance with the  
15 water quality standards within a reasonable time.  
16 So, the communities need some assurance that we're  
17 not going to be shifting targets on them and moving  
18 our goals and - and coming back with different ideas  
19 about what they're going to have to do in  
20 controlling these CSO's. They understand the need

21 to - for the continual improvement that I mentioned  
22 earlier, but they also need that assurance that they  
23 have a rule here that they can look to that if their  
24 compliance - they're reasonably certain that we're  
25 not going to place any other requirements on them.

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1 So that one, again, is something that I think we can  
2 certainly use some advice from you all on if you  
3 have any for us today or later. We'd really  
4 appreciate that. The last part of this rule goes to  
5 the water quality standards under Subchapter  
6 7.031(12). This isn't anything new. It's just  
7 restating what - what tools we already have in place  
8 to develop alternative water quality standards for  
9 waters that are receiving CSO's. We - we felt it  
10 was good to put it into this rule because it's an  
11 option that the communities need to know that is  
12 there if they want to go that route. You probably  
13 recall some of my earlier discussions about the CSO  
14 rule that we - we actually looked, initially, to  
15 find a way to develop alternative water quality  
16 standards for waters receiving CSO's. It just  
17 didn't work. It is enormously difficult and  
18 requires some very definitive processes to go into  
19 place in order to get there. So, basically what we

20 did was we've - we said, "Here's what the processes  
21 are. If you want to go down that path, we're  
22 willing to work with you on that path, but it's  
23 going to take a lot of work." So, instead of trying  
24 to do it here and presenting those to you today as a  
25 rule, we're leaving the option open for those

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1 communities that wish to take that - take that path  
2 of working with us and developing alternative water  
3 quality standards. There's one other issue that I  
4 wanted to bring to your attention that's been  
5 somewhat difficult for us to address is what we do  
6 with the remaining rule on the 45-45 limits. That  
7 currently exists for non-continuous discharges. We  
8 originally thought that that - that language would  
9 come out of the rule once we developed this,  
10 thinking - did you have another comment, Ed?  
11 Another car with lights on or something? Sorry.  
12 But we - we thought that it would originally come  
13 out of the rule because that rule applied only to  
14 CSO events. Well, we have come to realize that,  
15 perhaps, there's other wet weather discharges that a  
16 45-45 limit applies to and - and in fact, Staff have  
17 been, in some occasions in permits, applied this  
18 effluent rule in a situation where there was not a  
19 CSO. So, if we were to take the 45-45 limits out of

20 the rule, we would have to change our process, if  
21 you will, in how we're addressing some other issues  
22 and I'm going to give you an example. We have some  
23 facilities out there that have sanitary sewer  
24 systems. They're not combined sewer systems,  
25 they're sanitary sewer systems that are facing some

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1 challenges in terms of that how they're handling I &  
2 I - inflow and infiltration into their system during  
3 stormwater periods. They have a peak flow that  
4 exceeds their design capacity and they have to do  
5 something during those periods and what's happening  
6 is that many are building what we call surge basins.  
7 And to handle those large flows, contain those  
8 large flows, if you will, and then route those flows  
9 back into the system during the dry - following dry  
10 weather period in order to achieve full treatment of  
11 that water. Well, being open in a basin, those  
12 basins have outfalls. They're required to have an  
13 emergency overflow in them. Well, having an  
14 overflow constitutes an outfall, which requires a  
15 limit and what Staff are doing is placing this  
16 non-continuous discharge effluent limit on that  
17 outfall. Now, we may not be seeing any outflows  
18 from those, but there is a requirement for a limit

19 there and that's what's been used. If we eliminated  
20 that possibility, then the limit would have to come  
21 from a water quality-based review. A water  
22 quality-based effluent limit would have to be  
23 developed and placed on that outfall. I don't know  
24 if that's the route the Commission wants to go or  
25 whether Staff should go there, but I think it

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1 deserves at least some further discussion and what  
2 we may want to suggest here is that let's not  
3 immediately take the 45-45 limits out of the  
4 effluent rule right now, but make it clear that they  
5 don't apply to CSO's and then continue the  
6 discussion with the wet weather work group. What do  
7 we do with the 45-45 limits with this applicability  
8 to possible sanitary sewer systems that are not  
9 combined? So, some advice from you on that would  
10 also be good. We'd also note that the rule has some  
11 need for clarity and we're going to continue to work  
12 toward better grammatical structure, if you will, to  
13 the rule, but - but what I've brought to you, I  
14 think, are the major points of where if you want to  
15 offer some advice, we'd certainly appreciate that.  
16 But again, if we don't hear anything from you today,  
17 then we'll move forward with looking at the  
18 Regulatory Impact Report and deciding what we need

19 to do with that and bring a rule back to you  
20 sometime at a later date. Yes, sir?  
21 COMMISSIONER HARDECKE: Is there a list of these nine  
22 minimum controls or --  
23 MR. SCHROEDER: Yes.  
24 COMMISSIONER HARDECKE: what do they consist of?  
25 MR. SCHROEDER: Oh, you get me on the spot here. I

19

1 wish --  
2 COMMISSIONER HARDECKE: I mean, you don't have to give  
3 it now.  
4 MR. SCHROEDER: Well, there's some people in the  
5 audience I'm sure that could probably give this to  
6 you, but it basically is best management practices  
7 that could be implemented rather immediately by many  
8 communities. In fact, most of the communities are  
9 probably implementing these things already.  
10 COMMISSIONER HARDECKE: And the long-term control plan  
11 would be a design physical change?  
12 MR. SCHROEDER: Right. Design of how they're going  
13 to eliminate connections to stormwater systems.  
14 Some of the things - the more expensive items that  
15 take a lot of design and construction involved with  
16 it.  
17 MR. GALBRAITH: We can provide a list of those to

18 the Commission.

19 COMMISSIONER PERRY: Along the lines about that CS -

20 CSO control policy. What concerns me is that that's

21 a policy and wasn't promulgated as a rule in case

22 someone should bring action.

23 MR. SCHROEDER: At the Federal level?

24 COMMISSIONER PERRY: Mmm-hmm.

25 MR. SCHROEDER: Actually, there's a reference, I

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1 believe, by the clean water - Federal Clean Water

2 Act that it has the force of law. And, again, there

3 may be someone in the audience that can better speak

4 to that than me. In fact, someone from EPA is here

5 today, Tony Petruska. And he may be able to convey

6 that to you. But my understanding is that it does

7 have reference in - in either Federal regulation or

8 Federal Clean Water Act that this - this --

9 COMMISSIONER PERRY: That's a Federal regulation

10 number.

11 MR. SCHROEDER: Yeah, should we ask Tony to give us

12 some insight on that?

13 COMMISSIONER PERRY: Yes, I - I'd --

14 MR. SCHROEDER: Tony, do you mind?

15 MR. PETRUSKA: Morning. In 2000, Congress inserted

16 into the Clean Water Act - and - and I didn't bring

17 it, but I'll do my best to paraphrase it. Language

18    which eludes to permits, orders need to conform to  
19    the 1994 CSO policy, so to the extent - it started  
20    in 1994 as a policy, but Congress, in a manner of  
21    speaking, inserted it into the Clean Water Act that  
22    permits need to conform to them along with orders  
23    and - I wish I had the language to show it to you,  
24    but it did get incorporated into the Act in that  
25    manner.  Is - is that the question you were getting

21

1    at?

2    COMMISSIONER PERRY:  Yeah - that - that's along the  
3    lines of my question.  My question goes because we  
4    have a State statute that says if someone prevails  
5    in a matter in which they've challenged a permit or  
6    any other action by Government, which is not based  
7    on a rule, but something that is simply policy, if  
8    they prevail, they will also get their attorney's  
9    fees and I could see this - and because of that, we  
10   have worked very hard as a Commission to make sure  
11   that all our policies are, in fact, promulgated as  
12   rules.

13   MR. PETRUSKA:  This is - from our perspective, this  
14   is not the - the typical policy that we would issue  
15   because, you know, in the context of more of a  
16   guideline or - or something like that.  I mean, we



17 view these - this policy as incorporated into the  
18 Clean Water Act. It - it - it's not termed as a  
19 regulation because those are promulgated through the  
20 - the code of Federal regulations. It's - it's not  
21 promulgated in that manner, but it is what we  
22 consider incorporated into the Clean Water Act, so  
23 it's not the typical policy that you would - you  
24 would normally see coming from the EPA. We view  
25 this as very much Federally enforceable, if - if

22

1 that helps. Something like that needs to be  
2 complied with and failure to do that, we believe can  
3 - is a violation of the Clean Water Act and  
4 enforceable in that manner. Does that answer your  
5 question?

6 COMMISSIONER PERRY: Yeah. I understand. Thank  
7 you.

8 MR. SCHROEDER: Are there any other comments or  
9 questions that the Commission has?

10 CHAIRMAN HERRMANN: Yeah, I'll reserve mine until  
11 other people have a chance to speak.

12 MR. SCHROEDER: Okay.

13 COMMISSIONER KELLY: On the - on the matter of  
14 deadlines or timeframes, I think I would like to see  
15 a timeframe; otherwise, you know, with the - with  
16 the costs and problems being so enormous that there

17 would be a tendency for people just to drift along.  
18 CHAIRMAN HERRMANN: I - well, then, I'll offer one  
19 of my comments. I don't think a specific timeline  
20 is judicious and proper. The situation and the  
21 conditions vary extremely from place to place, from  
22 point to point. First of all, what's the magnitude  
23 of the overflows? Secondly, what's the effect of  
24 those overflows on that particular stream? It can  
25 be anywhere from the Mississippi River down to

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1 Jack's Fork or some minor stream. So, there's a  
2 considerable difference in - in the application of  
3 controlled measures. The cost varies tremendously  
4 from place to place. St. Louis, Kansas City, for  
5 instance, has tremendous problems and tremendous  
6 costs to control and to implement these control  
7 measures. Podunk, Missouri, wherever that may be,  
8 has minimal requirements, has minimal financing  
9 requirements to solve those problems. So the - the  
10 conditions are so widely varied that I don't see  
11 that you can say, "Okay, in ten years or twenty  
12 years or whatever, every city in the state has to  
13 comply with these rules." I say they have to be  
14 looked at as an individual basis of Number One,  
15 what's the magnitude of the problem? Number Two,

16 what's the affect on the streams to which they  
17 discharge? And that's an individual assessment and  
18 that's what you're Staff people go through in  
19 permits and I think that should be extended to the  
20 individual permits in this - these cases.  
21 COMMISSIONER KELLY: Well, I agree each individual  
22 permit should be different. I was just thinking if  
23 DNR could - and I realize it would have to be  
24 tentative or at least if it's likely to - you know,  
25 I do see the difficulty, but I think that - I still

24

1 think that it would be possible to set an overall  
2 policy when the Department expects it to be  
3 completed.  
4 MR. SCHROEDER: The - and I'm pleased to hear that  
5 you're willing to listen to some of the other work group  
6 members. I think they can explain their perspective  
7 a lot better than I can for them, but what I hear  
8 from those that promote the twenty-year overall  
9 timeline is that they understand that each community  
10 is different, but they want - basically, what  
11 they're asking for is justification. That if it's  
12 going to take more than twenty years, why? What's  
13 the social-economic issue there that requires that  
14 they take longer than that? Those that have  
15 expressed that to me said that it's not an

16 enforcement issue so much to them. It's being able  
17 to make sure that that those communities are going  
18 to take that amount of time to get their CSO's under  
19 control have offered the best explanation of why it  
20 takes that long.

21 CHAIRMAN HERRMANN: I thought your program for the  
22 nine minimum controls did establish some progress  
23 chart or some means of achieving the final end?

24 MR. SCHROEDER: Right, if you --

25 CHAIRMAN HERRMANN: That should be the

25

1 determination, not an artificial twenty-year --

2 MR. SCHROEDER: Yeah, absence of a twenty-year  
3 overall timeline. We're going to see long-term  
4 control plans that have a - a end date on them  
5 because each long-term control plan has to  
6 demonstrate how those actions are going to bring  
7 those discharges into compliance with water quality  
8 standards and how long is it going to take. Plus,  
9 you're going to see interim timelines associated  
10 with those plans.

11 CHAIRMAN HERRMANN: Right, right.

12 MR. SCHROEDER: And then as you've heard today in  
13 the rule, you're going to see the Department review  
14 those plans on a regular basis to make sure that

15 they continue to look at the issues and adapt new  
16 technology and new conditions to - to address issues  
17 at the maximum extent practicable to be able to  
18 achieve the best timeline in a most effective, yet  
19 reasonable timeline for each community. So -  
20 CHAIRMAN HERRMANN: Okay. We have a request to  
21 address the Commission from Ted Heisel, Missouri  
22 Coalition for the Environment.  
23

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1 MR. HEISEL: Morning. I think Phil has touched on a  
2 lot of the points, but I wanted to add a little bit  
3 to some of our concerns about the outstanding issues  
4 on this rule. I also want to throw in a quick plug  
5 in. Phil has been working tremendously hard on this  
6 and other issues and I think that we did - even  
7 though we didn't quite wrap this one up, I think we  
8 did make a lot of progress in the - in the work  
9 group meetings. The first issue I want to talk  
10 about is Subsection 10E, which is one of the ones  
11 that Phil had mentioned, which I have seemed to lost  
12 my notes on. In any event, the - the - the  
13 Subsection 10E is the compliance section, compliance  
14 language, which basically says, "Compliance with the  
15 nine minimum controls and the longterm control plan  
16 development equals compliance with this rule," and I  
17 - it's not so much that this takes away DNR's

18 adaptation as I - I don't frankly understand what  
19 exactly it means. And any time anything goes into a  
20 rule that is unclear to me what it means it causes  
21 me a little bit of concern. I know that some of the  
22 communities that have CSO's are interested in having  
23 this provision in the rule and I - and I've never  
24 quite understand - understood exactly why it needs  
25 to be there. We don't see speeding signs on the

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1 highway that say, you know, "Fifty-five miles per  
2 hour and if you drive fifty-five, you are therefore  
3 in compliance with the rule." I think - I think the  
4 intent of doing this state policy is, basically, to  
5 incorporate - to do away with or to not apply the  
6 45-45 limits to the CSO situations, but then to  
7 adopt the Federal CSO policy. Well, the Federal CSO  
8 policy is a very large thing that contains many  
9 different aspects and the concern with - with  
10 Subsection 10E is that by saying, "Well, if you do  
11 basically the procedural requirements for nine  
12 minimum control as a longterm control plan, that's  
13 good enough." I guess, you know, one interpretation  
14 and maybe this would not be the interpretation a  
15 judge would use or whoever would use, but does this  
16 sort of eliminate any substantive outcomes that are

17 required under this rule. Does it simply mean,  
18 "Well, if you go through the procedures of doing a  
19 longterm control plan, nine minimum controls, that's  
20 good enough." So, it - it mainly comes down to I  
21 don't quite understand what it means and I don't  
22 think we write into most rules, you know, if you  
23 comply with this rule, it means you comply with this  
24 rule or if you do these certain things, that means  
25 you are in compliance with the rule. You sort of

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1 read the rule and figure out whether or not you're  
2 in compliance. The second thing is the nine minimum  
3 control implementation. The way the - the way the  
4 language wound up in the final draft that I think is  
5 before you today, it - it indicates that there's  
6 still sort of an implementation schedule for nine  
7 minimum controls and if you look at the Federal CSO  
8 policy, nine minimum controls were actually supposed  
9 to be done by 1997 - by January of 1997. And I  
10 thought that during the stakeholder meetings, most  
11 of the communities that actually represented that,  
12 in fact, nine minimum controls were being met - are  
13 being implemented. So, I was a little bit mystified  
14 when this showed up in this draft as to why we need  
15 to still have an implementation schedule for nine  
16 minimum controls. And then related to that in

17 Sections 10C2, if you look at how that  
18 implementation schedule for nine minimum controls is  
19 developed, it actually says, basically, the  
20 implementation schedule shall be the one that is set  
21 forth outlying - or outlined in the permit  
22 application. Well, a little interpretation of that  
23 is, basically, whatever the CSO community says in  
24 its application in terms of an implementation  
25 schedule for nine minimum controls is going to be

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1 what gets written into the permit. Obviously, we  
2 have a concern about that.  
3 COMMISSIONER PERRY: Excuse me.  
4 MR. HEISEL: Yes?  
5 COMMISSIONER PERRY: Did you say that what they put  
6 in their application is what is written in the  
7 permit?  
8 MR. HEISEL: Well, I think that's the - that would  
9 be the - to me, anyway, maybe I'm not reading this  
10 closely enough.  
11 COMMISSIONER PERRY: Wouldn't that be saying that there's  
12 an assumption here that the Department just  
13 automatically okays an application.  
14 MR. HEISEL: Well, I mean, if you - if you just read  
15 this, it says, "Per the schedule outlined in the



16 permit application," and so, you know, is that  
17 limiting DNR's discretion to do anything other than  
18 what the community says it needs in terms of an  
19 implementation schedule? I'm not saying that DNR  
20 rubber-stamps permits, I'm saying that this language  
21 could limit the discretion to say, "Well, we don't  
22 think this community needs five years to implement  
23 the nine minimum controls."  
24 COMMISSIONER PERRY: Okay, I read that just saying  
25 that discretion lies within the Department to

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1 determine what - what that time schedule should be.  
2 And - and I certainly understood your implication to  
3 be, "Well, whatever the permittee asks for, of  
4 course, that's what the Department will give them,"  
5 and I'm just -  
6 MR. HEISEL: Right, I mean, I think you understand  
7 my comment correctly. That is my - that is my  
8 concern about the language that maybe not everyone  
9 reads it the same way I do, so. Anyway. The  
10 one other issue is - is if we have a situation as I  
11 think we do in Kansas City and St. Louis where once  
12 the longterm control plans are put together, those  
13 communities are not going to meet water quality  
14 standards during the life of the next permit, which  
15 would basically be five years. And there was some

16 discussion in the work group about, well, what -  
17 what is to be done in that situation, because I  
18 guess DNR cannot write a permit that doesn't bring a  
19 community or - or a permittee into compliance with  
20 water quality standards. And the - the Federal CSO  
21 control policy says that a major permittee  
22 situations like St. Louis and Kansas City, there  
23 should actually be a judicial order put in place to  
24 govern what sort of timeframe are we going to  
25 require this community to come into compliance with

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1 water quality standards. To me, I mean, I would  
2 tend to agree with - with that policy and that - I  
3 mean, we are talking about huge investments of money  
4 in terms of trying to bring these situations into  
5 compliance with the Clean Water Act. I think that  
6 that level of oversight is not a bad thing when  
7 we're talking about hundreds of millions of dollars  
8 being spent. It's not a bad thing to have a - a  
9 court order, a consent decree, basically, in place  
10 that sets forth, "Okay, five years from now, this is  
11 going to happen. Ten years from now, this is going  
12 to happen. Etc., etc." That adds some additional  
13 accountability, I think, in terms of how this money  
14 is spent and what kind of timeframes we're - we're

15 going to stick to and in trying to deal with these  
16 CSO situations. I guess one last thing is in terms  
17 of timeframes to implement or to develop the - the  
18 longterm control plan, the way it's written right  
19 now would allow from today, probably three to four  
20 years before these longterm control plans are  
21 developed. And, you know, these are major  
22 undertakings. I think everybody understands that,  
23 but on the other hand, at least St. Louis and Kansas  
24 City, St. Louis may be a little bit longer than  
25 Kansas City, has been working on a longterm control

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1 plan for many years - have actually submitted one  
2 draft to the Department and have received approval  
3 for parts of their longterm control plan already.  
4 And, so, I would hope that at a bare minimum of  
5 these two years would be complied with, but the way  
6 the rule is written currently, it allows DNR some  
7 discretion to go beyond the two-year window after  
8 this rule is promulgated in terms of actually  
9 developing a longterm control plan.  
10 CHAIRMAN HERRMANN: And magically the money is going  
11 to come out of the sky to finance this.  
12 MR. HEISEL: No, I mean --  
13 CHAIRMAN HERRMANN: It has no bearing on - on a time  
14 schedule.

15 MR. HEISEL: Well, I - I'm not - I was not talking  
16 about the time schedule of actually coming into  
17 compliance with the longterm control plan, just to  
18 develop the longterm control plan. The rule gives,  
19 basically, two years from the date that this rule is  
20 promulgated or goes final, but then there's sort of  
21 an out and some wiggle room to say, "Well, it can  
22 take longer or communities can have longer if DNR  
23 decides that's a good idea."  
24 CHAIRMAN HERRMANN: You bet. That's our discretion.  
25 COMMISSIONER PERRY: You're saying --

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1 MR. HEISEL: Well, I understand your point, but, I  
2 mean, if - if these communities have been working on  
3 this already for several years, this is basically  
4 the document that needs to be done to set a lot of  
5 these things in motion. I mean, our position is  
6 that we need a hard and fast deadline to say, "Okay,  
7 it's got to be done by such and such date."  
8 CHAIRMAN HERRMANN: And I'm telling you that the  
9 very ability of the situation - the very ability of  
10 the solutions is such that I don't think you can, in  
11 every case, say in two years, four years, five  
12 years, ten years, twenty years, you're going to have  
13 the solution. That's - that's illogical. Okay,

14 thank you. I'd like to hear from Hans Holmberg,  
15 Kansas City, Missouri, Water Services Department.  
16 MR. HOLMBERG: Thank you, Commissioners, for this  
17 opportunity. Just to clarify, I'm Hans Holmberg.  
18 I'm with the consulting firm, Limno-Tech Incorporated.  
19 We currently are working with both the City of  
20 Kansas City, Missouri, as well as St. Louis on  
21 addressing their CSO issues. As well, Limno-Tech has  
22 been involved in with CSO communities across the  
23 country, as well as being a prime contractor on the  
24 EPA's CSO program in their headquarters in  
25 Washington, DC, for the past five years. I want to

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1 echo Ted's comments on the work Phil's done in  
2 leading the stakeholders group. He's been  
3 persistent and definitely has done a good job of  
4 allowing all sides to hear their concerns heard  
5 during our stakeholder meetings. To follow up on  
6 Commissioner Perry's questions and Tony's response  
7 on the - the status of the policy versus law in the  
8 Consolidated Appropriations Act for Fiscal Year  
9 2001, Public Law 106-554, commonly referred to as  
10 the 2000 Amendments to the Clean Water Act.  
11 Congress put in there that each permit or  
12 enforceable order for a discharge from a municipal  
13 combined storm and sanitary sewer shell conformed to

14 the CSO control policy. So, again, basically,  
15 affecting that policy into law. Additional comments  
16 on the proposed rules or draft rules that are in  
17 front of you at this stage, Phil commented on the  
18 implications of the existing reference to 45-45  
19 limits for BOD and total suspended solids for CSO  
20 treatment devices, we believe the reference  
21 specifically to combined sewer overflow treatment  
22 devices should be removed from the law to clarify  
23 that that secondary type level of treatment for  
24 CSO's is inappropriate. Again, that's what brought us here to  
25 the table and the first place is to affect state

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1 rules that follow the CSO policy and - and allow for  
2 site specific controls for CSO's to be developed.  
3 Commenting on the comments Ted presented on the nine  
4 minimum controls, we do agree nine minimum controls  
5 were required by the CSO policy to be implemented on  
6 January 1st of 1997. We have provided the State  
7 with specific language. On the two sections that  
8 refer to the nine minimum controls, rather than  
9 submitting a time table with the application - the  
10 permit application - it should read that  
11 documentation here in B2 - documentation of  
12 implementation of the nine minimum controls as

13 specified by the CSO policy to show that these  
14 communities are continuing - have been and are  
15 continuing their implementation of the nine minimum  
16 controls. Again, in Section C2, we would suggest a  
17 suggested specific language that CSO's shall be  
18 controlled by continued implementation of the nine  
19 minimum controls to clarify that issue. Following  
20 up --  
21 COMMISSIONER PERRY: Excuse me - you're - are you  
22 proposing a change to that C2?  
23 MR. HOLMBERG: Yes, we have suggested specific  
24 language to the State that - for their consideration  
25 in finalizing these draft rules and both in B2 and

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1 C2 and B2 would read, "Documentation of  
2 implementation of the nine minimum controls as  
3 specified by the CSO policy." And the CSO policy  
4 does read - as I said, required implementation of  
5 the nine - nine minimum controls beginning January  
6 1st, 1997. The communities are required to document  
7 the implementation of those controls, so this would  
8 just identify that they are doing what is required  
9 of them by the CSO policy. And then in C2, again,  
10 the nine minimum controls are intended to meet the  
11 technology-based requirements of the Clean Water Act  
12 for CSO's and they shall be controlled by continuous

13 - by continued implementation. So, again,  
14 clarifying that these communities have been and  
15 continue - and will continue to implement the nine  
16 minimum controls. On the issue raised on Paragraph  
17 E, I believe I agree with Phil's statements that  
18 this paragraph is needed for clarification of the  
19 requirements for CSO's that the concern that the CSO  
20 policy is a large document. We felt it not  
21 appropriate to replicate it here in these rules, but  
22 in 10, Paragraph A -  
23 END OF SIDE A, TAPE ONE  
24 BEGINNING OF SIDE B, TAPE ONE  
25 MR. HEISEL: minimizing the importance of any - any

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1 part of the CSO policy and that the communities  
2 would still be required to meet the entirety of the  
3 CSO policy and we feel that that paragraph, again,  
4 is important in clarifying that these roles - these  
5 rules provide for the - the entire requirements for  
6 compliance with CSO's and if there were other -  
7 we're - we're not aware of any other requirements  
8 and if there were, we would certainly want - the  
9 communities would want to be aware of such  
10 requirements. Because of the - certainly, the - as  
11 has been mentioned, the money that is at stake in



12 addressing CSO's. I'd also like to comment on the  
13 twenty-year cap on - or the inclusion of a  
14 twenty-year limit to the implementation of the  
15 longterm control plan. We agree with - with what  
16 Phil had mentioned that these are very site-specific  
17 issues. The development of the longterm control  
18 plan is intended to assess, as Commissioner Herrmann  
19 mentioned, an understanding of the system. An  
20 understanding - the collection system, how it  
21 responds to rainfall events. How those discharges  
22 impact the receiving streams. How much it's going  
23 to cost to control those CSO's and how the community  
24 can afford to pay for it. All that comes together  
25 in helping the community to find what an affordable

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1 schedule is to address CSO's and that information  
2 cannot be developed until the completion of the long  
3 - you know, through the development and the  
4 completion of the longterm control plan and then you  
5 follow through with implementation. So, I think  
6 that twenty years is an arbitrary number and should  
7 not be included in the rules. The longterm control  
8 plan will go out. There is a public participation  
9 process required in the development of the longterm  
10 control plan. Upon completion, it will go out for  
11 public review and comment, so there will be

12 opportunities for the public, the agencies to  
13 comment on the schedule for the implementation of  
14 the longterm control plan and that those specific  
15 number in the rules would be inappropriate. Again,  
16 I want to thank Phil for leading this effort and I  
17 appreciate the Commission's interest in this issue.  
18 CHAIRMAN HERRMANN: Thank you, Mr. Holmberg. We also  
19 have a request from Ken Midkiff, Sierra Club.  
20 MR. MIDKIFF: Mr. Commissioner, Mr. Chairman,  
21 members of the Commission. Ken Midkiff,  
22 M-i-d-k-i-f-f. I'm the Conservation Chair for the  
23 Ozark, which is the Ozark Chapter, which is the  
24 Missouri Chapter of the Sierra Club. The twenty  
25 years - I'm going to talk specifically on that. And

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1 Phil did a relatively good job, but - but - but he  
2 told me if - if I didn't say everything that he  
3 thought - or I thought he should say, then I should  
4 stand up here and say something, so I'm going to.  
5 And I'm not disagreeing, actually, with Commissioner  
6 Herrmann. I'm not disagreeing with Commissioner  
7 Kelly. If - but here's a language I suggest that -  
8 that DNR - MDNR should not approve any longterm  
9 control plan or LTCP that goes beyond twenty years  
10 unless the entity, which be Kansas City, St. Louis,

11 Macon, St. Joe, Moberly, could show how or why  
12 meeting that twenty-year deadline would cause  
13 widespread economic and social hardship. Now,  
14 thanks, to Phil, he sent me the EPA's guidelines for  
15 determining that. It's a hundred twenty-six pages  
16 long without any pictures and it was fairly boring.  
17 Sorry, Tony. But, it - it - it outlines a process  
18 by which the Agency can make the determination that  
19 if you have a twenty-year deadline, that that would  
20 end - ends right there that would cause economic and  
21 social hardship. If that is the case, then the  
22 community, St. Louis, Kansas City, St. Joe, would  
23 need to show why that would be the case. And,  
24 again, that is included in EPA policy and guideline.  
25 Now, and Hans talked about when this could be done.

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1 Well, what I'm suggesting is an extension could be  
2 sought on initial submission of a longterm control  
3 plan or at any time during the twenty-year  
4 timeframe. So, they could either do it right up  
5 front or if they saw they weren't going to meet that  
6 longterm control plan's deadline, then it could be  
7 added later - maybe after fifteen years or eighteen  
8 years or whatever. But in short, the Sierra Club  
9 just doesn't like the idea of granting an indefinite  
10 period of time to come into compliance. But the

11 same time, we recognize that it may well be  
12 impossible for, say, St. Joe to comply within twenty  
13 years. While maybe Moberly may attain compliance  
14 within a few years to continue your analogies about  
15 big cities versus podunk, although I'm certainly not  
16 going to imply that Moberly is a podunk town,  
17 they're smaller than St. Joe.

18 CHAIRMAN HERRMANN: But I think - remember that  
19 Moberly is well long in their control plan.

20 MR. MIDKIFF: They are - yes, they are.

21 CHAIRMAN HERRMANN: Why give them twenty years to  
22 achieve --

23 MR. MIDKIFF: No, not --

24 CHAIRMAN HERRMANN: attainment. You're saying that  
25 everybody gets twenty years.

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1 MR. MIDKIFF: No, Moberly will submit a longterm  
2 control plan, which shows that they will be in  
3 compliance within - what'd Mary say? Is Mary here?

4 CHAIRMAN HERRMANN: I think they've already -  
5 already submitted that.

6 MR. MIDKIFF: They may be, yeah.

7 CHAIRMAN HERRMANN: Have they not submitted that?

8 MR. MIDKIFF: They may be in compliance within five  
9 years.

10 CHAIRMAN HERRMANN: They're very close to being in  
11 compliance within --  
12 MR. MIDKIFF: No, I'm not ruling out that  
13 possibility of a shorter timeframe. All I'm saying  
14 is that the timeframe should not go beyond twenty  
15 years unless it can be shown that it would cause  
16 widespread and economic and social hardship. It  
17 could well be that if you have to tear up Crown  
18 Center Plaza, for example, in - in Kansas City, it's  
19 going to take well beyond twenty years to do that  
20 and I think they could show cause why that should be  
21 done. Same thing with St. Louis.  
22 CHAIRMAN HERRMANN: What you're saying is agreeing  
23 with me that there should be a site-specific  
24 determination.  
25 MR. MIDKIFF: I'm not - no, I'm proposing a middle

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1 ground that it should be a site-specific  
2 determination based on information submitted by the  
3 entity to Phil or whoever grants the permit - Peter  
4 Goode I guess - that would show why they can't meet  
5 that twenty-year deadline. So, I'm - I'm proposing  
6 to say there would be twenty years - and that's -  
7 and I agree, Hans - it was somewhat arbitrary. I -  
8 I surveyed various people in the Sierra Club who had  
9 been involved in this throughout the country from

10 Washington, DC, to Little Rock to Chicago and out  
11 west and the timeframe ranged from eight to thirty  
12 years, so twenty was just sort of in the middle.  
13 EPA won't approve a plan, for example, that goes  
14 beyond fifteen years and you might ask Tony why  
15 that's the case, but I'm not going to. But, anyhow,  
16 that is one of the issues that we have yet to  
17 resolve and it's been discussed and cussed at length  
18 in the CSO work group meetings and probably will  
19 continue to do so. We range from complete  
20 cooperation coordination to heated debate and  
21 argument.  
22 COMMISSIONER PERRY: I would like to follow up on --  
23 MR. MIDKIFF: Yes?  
24 COMMISSIONER PERRY: How does your proposal, if I  
25 understand this, how they cannot meet the

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1 twenty-year deadline, meet the case like Moberly,  
2 which as this says, would be encouraged to meet that  
3 much sooner? You are actually, if I understand  
4 that, granting Moberly twenty years.  
5 MR. MIDKIFF: Well, no, now Moberly I readily agree  
6 doesn't like having that long. Mary West wants her  
7 feet - her people's feet held to the fire for  
8 Moberly on a much shorter timeframe, but I think

9 Phil has probably answered that. The longterm  
10 control plan that Moberly has submitted says that  
11 they will meet the water quality standards within --  
12 COMMISSIONER PERRY: And that's my point. Doesn't  
13 that - if that takes care of them, why wouldn't it  
14 also take care of why do we need the twenty-year  
15 deadline?  
16 MR. MIDKIFF: Oh, well, because you're treating  
17 St. Joe and Moberly in the same way.  
18 COMMISSIONER PERRY: And the law's supposed to do  
19 that?  
20 MR. MIDKIFF: No, because St. Joe - actually,  
21 St. Joe may well need to go beyond twenty years because  
22 they treat --  
23 COMMISSIONER PERRY: Right, but as this is written,  
24 it would be able to go beyond - it's what is in the  
25 permit as agreed upon a case-by-case basis by the

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1 Department.  
2 MR. MIDKIFF: Well, except we're allowing the  
3 possibility by saying no plan should be approved  
4 within twenty years. And - and the reason I say  
5 that is, basically, right now it's best professional  
6 judgement. And it's the best professional judgement  
7 of - of Phil or whoever is reviewing the plan versus  
8 maybe whoever is the - Hans or somebody for Kansas

9 City or St. Louis versus the EPA. So, you have a  
10 whole plethora of - of best professional judgements.

11 This eliminates the best professional judgements  
12 and allows the DNR to assess this longterm control  
13 plan on a relatively procedural basis.

14 COMMISSIONER PERRY: Okay, I guess maybe we just  
15 disagree. It seems to me that best professional  
16 judgement is, in fact, what we want to use and what  
17 you're suggesting they're going to use if someone  
18 determines that twenty years doesn't fit. It goes  
19 back to my point why put that in if they have that  
20 discretion for beyond twenty years, they should have  
21 it for before twenty years, which gets us right back  
22 to them exercising discretion.

23 MR. MIDKIFF: I don't disagree with you. All I'm -  
24 all I'm doing is allowing a way for the Department  
25 to disapprove anything that goes beyond twenty years

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1 unless it can be shown that that will cause  
2 widespread - I keep saying widespread panic, but  
3 that's not - that's not the right word.

4 COMMISSIONER PERRY: Bob, and the - and the  
5 Department obviously has that power anyway, because  
6 they --

7 MR. MIDKIFF: I'm not sure they do.



8 COMMISSIONER PERRY: grant the permit. There's a  
9 permit involved.

10 MR. MIDKIFF: Well, we - we can discuss this, but  
11 I'm - I - one of the things this would do would be  
12 to give the authority to the Department by  
13 regulation, which has the power of the law to do -  
14 to disapprove this in case it went beyond without  
15 any documentation showing it would cause hardship.  
16 Because I don't - I don't - it's my assessment that  
17 right now, neither the Department nor the EPA have  
18 that authority. This would give that authority.  
19 But, again, we'll continuing to discuss this and  
20 I'll - I'll be happy to send you the hundred  
21 twenty-six page document.

22 COMMISSIONER PERRY: No, thank you.

23 MR. MIDKIFF: Okay. Without pictures.

24 CHAIRMAN HERRMANN: You can read Section 644, the  
25 Department does not issue the permits. The Director

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1 issues the permits on behalf of the Commission.

2 MR. MIDKIFF: That's correct.

3 CHAIRMAN HERRMANN: Okay, then --

4 MR. MIDKIFF: I stand - I stand corrected.

5 CHAIRMAN HERRMANN: Yes, sir.

6 COMMISSIONER PERRY: I, too, understood that in the  
7 discussion.

8 CHAIRMAN HERRMANN: Is that statement correct? That  
9 the EPA would not approve anything longer than  
10 fifteen years, Tony?

11 MR. PETRUSKA: Not entirely, no. The policy - the  
12 CSO policy does not have a specific timeline for  
13 full implementation of a longterm control plan. Our  
14 interest in this entire process is to make sure that  
15 the - the - the - the rule that comes out is  
16 consistent with that policy. What we do have in  
17 addition to the policy are various guidance. There  
18 - there is a number of - of communities where EPA  
19 has been involved with - in - in developing longterm  
20 control plans. There are - for lack of a better  
21 term, I'll call it kind of rules of thumb that the  
22 Agency uses. There is guidance that the Agency kind  
23 of uses to look at how long it should take  
24 communities to implement a longterm control plan.  
25 We actually use as a point of departure fifteen

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1 years, generally, that what we really expect is that  
2 the longterm control plans will be implemented as  
3 soon as practicable. So, we don't necessarily just  
4 start at fifteen and allow everyone to go up to that  
5 deadline. It's as fast as they can reasonably do it  
6 is what is expected. But, in the size of the

7 communities, for the larger ones, the Agency  
8 believes that most cities can construct billion-plus  
9 dollar projects in much shorter time than fifteen  
10 years. Certainly affordability comes into the  
11 issue, but we're not necessarily talking - there's a  
12 number of issues that come into that. One is how  
13 fast can communities put pipes in the ground? How  
14 fast can they pour concrete and do things like that?  
15 The Agency believes the physical construction can  
16 be done in relatively short period of time.  
17 Certainly less than fifteen years. Affordability  
18 and how long it takes communities to pay for it, I  
19 mean, that's certainly a different issue and the  
20 payment can go on. What we generally use for large  
21 projects or point of departures is fifteen years.  
22 Now, we don't necessarily set that as a hard and  
23 fast date. If there are issues of affordability and  
24 if there's more that can be done and cities need  
25 longer and - and truly exhibit that financial

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1 inability to do it faster, then we'll consider a  
2 longer - but, without that demonstration, if you're  
3 - you're looking up front, talking with communities,  
4 fifteen years is really the rule of thumb we start  
5 with. From our perspective in this particular rule,  
6 we have not been - we've very much been in the

7 middle on this discussion of whether there needs to  
8 be a timeline or not. We haven't really weighed in  
9 one way or the other. We don't see it if there is a  
10 timeline in there as being inconsistent with the  
11 policy. If - if the State in this work group  
12 believes that it's appropriate and the Commission  
13 believes that it's appropriate, that would be fine  
14 with us if there is a hard and fast timeline in  
15 there. We don't see it as inconsistent. We also  
16 don't see it as inconsistent with the policy if it's  
17 not there, because the policy doesn't have a hard  
18 and fast date in it anyway, so, we've really been  
19 kind of on the fence and we haven't really weighed  
20 in one way or the other on it. Mainly, again,  
21 because we don't see it as inconsistent either way.

22

23 CHAIRMAN HERRMANN: Okay, I'd like to take a little  
24 issue with your - your comment, Tony. You say the  
25 solution to the problem might be solved by laying

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1 pipe or placing concrete and in some cases, it's  
2 much more complex than that. And Ken Midkiff  
3 mentioned tearing up the middle of Crown Plaza --

4 MR. PETRUSKA: Sure.

5 CHAIRMAN HERRMANN: I might use an analogy in

6 St. Louis's case. How practical and feasible is it to  
7 consider tearing up downtown St. Louis and  
8 disrupting business? That's almost as ridiculous  
9 as the Highway Department proposing to close Highway 40  
10 and --

11 MR. PETRUSKA: Certainly - certainly your point is  
12 well taken, right.

13 CHAIRMAN HERRMANN: And - and it's not only the -  
14 the practicability of solving the problem by those  
15 means, but also how you're going to finance the  
16 many, many dollars that come to solve a problem and  
17 - and to say in every case as some people are  
18 proposing that you should say - it should be done in  
19 twenty years, I say is infeasible because the small  
20 cities - many of the small cities - can - can solve  
21 the problem. Number One, they might not have the  
22 affect on the stream - the receiving stream - that  
23 the big cities would and - and in St. Louis's case  
24 and in Kansas City's case, what's the affect of - of  
25 sporadic overflows to the Mississippi and Missouri

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1 Rivers? There has been a considerable amount of  
2 testing done in St. Louis, for instance, above and  
3 below St. Louis, during periods of run-off and  
4 discharge out of the storm sewers and the sanitary  
5 overflows - the CSO's - and it's never been shown to

6 be a cause of impairment of the stream during high  
7 flow periods.

8 MR. PETRUSKA: Certainly, you - you bring up a  
9 number of - of - number of important points in  
10 there. Within the context of developing the  
11 longterm control plans, communities do look at the -  
12 the water quality issues and what it - what  
13 solutions it takes to achieve water quality.

14 Certainly, meeting water quality is one of the main  
15 objectives of the CSO policy when you get into  
16 things like that. You know, certainly, one of the  
17 options that would be looked at would be, for  
18 example, total separation, eliminating all of the  
19 combined sewer. Now, you know, granted, in large  
20 cities, I - I think we could probably all draw the  
21 conclusion that that's going to be a - just an  
22 astronomical cost, not to mention the extreme social  
23 hardship if you start ripping up all the - all the  
24 streets with this thing.

25 CHAIRMAN HERRMANN: One thing that people neglect to

1 mention when they start talking about total  
2 separation, as impractical as it is in build-up  
3 areas, is in the older cities and Moberly and Macon  
4 included, since they were mentioned, the older

5 buildings all had internal downspouts connected to a  
6 single outlet from those buildings. So, if you're  
7 going to have total separation, you will go back  
8 into those buildings and take the downspouts out of  
9 the sanitary connection from every one of those old,  
10 old buildings and that is almost as infeasible as  
11 tearing up the street out in front of the business  
12 district.

13 MR. PETRUSKA: I - I - I think that we're probably  
14 saying the same thing in that front. You know, but  
15 it is, yet that is something that that really needs  
16 to be considered within - within the plan. The plan  
17 is to look at the range of alternatives and look at  
18 water quality and look at for the community. What  
19 is really feasible? What is the - the most - makes  
20 the most economic sense to get to the objectives of  
21 the policy and the policy, again, is to minimize  
22 overflows to meet water quality standards.

23 CHAIRMAN HERRMANN: The ultimate objective is to  
24 meet the water quality standards.

25 MR. PETRUSKA: That - that's certainly one of them,

1 but there - but they are to minimize the overflows  
2 as well. But there's actually three objectives  
3 stated in the policy. One is to make sure that the  
4 overflows are as a result of only wet weather

5 events. The other one is to - to meet the - the  
6 water quality objectives of the Clean Water Act and  
7 the third objective is to minimize the impact of -  
8 of CSO's to human health, aquatic, biota, --  
9 CHAIRMAN HERRMANN: Gets sent into water quality.  
10 MR. PETRUSKA: Right, it - it - water quality tends  
11 to drive it in most situations. But once the  
12 communities develop these range of alternatives and  
13 look at them, that's where the final selected remedy  
14 comes from based on the water quality factors, the  
15 economics, looking at what we refer to in the policy  
16 as the knee of the curve analysis for costs, things  
17 like that. Those all come into consideration when  
18 the final selection - or when the - the - the  
19 selection of what the final alternatives are within  
20 the longterm control plan. Those are all to be  
21 considered. So, yeah, I mean, the policy really  
22 describes looking at how to eliminate overflows  
23 totally, as well as, you know, what it takes to get  
24 to water quality standard and the range of the  
25 things in between and, of course, economics and all

1 that get to the - the - the heart of what ultimately  
2 gets selected. By getting back to the issue again,  
3 that - that kind of started this discussion, how



4 long does that take? Well, you know, when you're  
5 dealing - when we're asked that question, you know,  
6 we're not really in the - in the context of  
7 developing this rule. We're not really talking  
8 about a specific situation because they're - we'll  
9 acknowledge that they all vary. But when asked how  
10 long should it take, our part - our point of this  
11 departure is generally fifteen years, but I'll  
12 certainly acknowledge to - to - to everyone that -  
13 that could certainly vary considerably, but, again,  
14 you know, my comment earlier on how long does it  
15 take to lay pipe and things like that, that could be  
16 done relatively quickly, but we also understand that  
17 there are a wide range of things that could happen.  
18 It may not involve laying pipe. It may be something  
19 entirely different, but physically constructing the  
20 things are what we believe certainly can go faster  
21 than what - what we tend to run into with  
22 communities and, certainly, we think the physical  
23 construction of activities - or the physical  
24 construction of the controls, whatever they would  
25 be, generally can be done within fifteen years, but,

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1 again, we're not necessarily pushing that that be  
2 specifically stated in this rule. We wouldn't  
3 object to it. If it's in there, we wouldn't see it

4 as inconsistent, but, you know, we've - we've kind  
5 of been silent on that issue for context of putting  
6 it in the rule here.

7 CHAIRMAN HERRMANN: Thank you, Tony. I'll start it  
8 with your request for guidance on - do we include or  
9 don't we include twenty years?

10 COMMISSIONER MINTON: Chairman Herrmann?

11 CHAIRMAN HERRMANN: Yes, sir.

12 COMMISSIONER MINTON: Do me a favor (inaudible) let  
13 me just make a comment in - in regards to what I've  
14 heard thus far. I - as - I don't really see an  
15 issue with a twenty-year timeline so long as it is  
16 issued that the rule of reading is such that with  
17 the submittal of the plan, that there will be the -  
18 the flexibility to allow an extension beyond twenty  
19 - twenty-year timeframe for those metropolitan areas  
20 that need it. I think the other - the one advantage  
21 to having a timeline of whatever the year may be in  
22 as it will cause the small communities or those  
23 people who would tend to procrastinate and never  
24 really move forward or (inaudible), okay, at some  
25 point, we sit there and a clock's ticking and so we

1 will have to address this. So with that said, I  
2 think that the - I think that the metropolitan areas

3 must be afforded such abilities to go beyond that.  
4 The other advantage to them having a timeline if it  
5 works that at least those players involved in the  
6 St. Louis and the St. Joe and Kansas City - those  
7 large metropolitan areas - the players that are  
8 involved in that, if they were wanting to deviate -  
9 seek the Commission to deviate from the twenty-year  
10 timeframe, if they were required to say thirty,  
11 forty, fifty years. How much more down the road  
12 that that may be, that those - that the players  
13 involved would at least have some sort of idea where  
14 we're moving to and how we're going to get there.  
15 That would be the only advantage that I could see to  
16 having a definitive number placed in a rule that it  
17 - it would cause everyone to seek at least the same  
18 timeframe for if they were to move forward to  
19 achieve compliance. For those people who couldn't  
20 do it, there's a twenty-year timeframe. We would  
21 know as a - as an Agency as Commissioners as a  
22 public at large - we would at least know what  
23 St. Louis was going to take fifty years in order to  
24 accomplish the task. And then that would - that  
25 would - that would give everybody some sort of

1 working knowledge of - of where - of where we were  
2 going to get it. That would be my only comment

3 about the timeframe and I think - I think it would  
4 be interesting to find out where St. Louis and  
5 Kansas City stand on that issue of - of how many  
6 years they project it would take them to come into  
7 compliance. If they - if they think they could ever  
8 come into compliance.

9 CHAIRMAN HERRMANN: I think we get that information  
10 and you can argue with me if you choose, Phil. This  
11 rule would require submittal of a longterm control  
12 plan within six months of the effective date of this  
13 rule. That longterm control plan by this rule would  
14 establish time tables and time lines in which  
15 certain actions were supposed to be completed. And  
16 isn't that, in effect, saying for that community,  
17 that particular community, you've now established a  
18 time line?

19 MR. SCHROEDER: Yeah, first, the way the rule's  
20 drafted, it would allow to two years to submit a  
21 longterm control plan.

22 CHAIRMAN HERRMANN: Okay.

23 MR. SCHROEDER: The six months was for a schedule to  
24 get the nine minimum control measures in place.

25 CHAIRMAN HERRMANN: Okay.

1 MR. SCHROEDER: A schedule for that. And you're

2 right. When the - everything that's going to  
3 dictate the longevity of getting to the point where  
4 communities can meet water quality standards is  
5 going to be embodied by the longterm control plan.  
6 That's where they have to tell us what they can do,  
7 when they can get it done, and what the results will  
8 be of those actions.

9 CHAIRMAN HERRMANN: Right.

10 MR. SCHROEDER: We feel that, you know, while a  
11 twenty-year deadline might help provide some focus,  
12 in some ways it might provide too much focus on a  
13 deadline. And where the real focus ought to be on  
14 what are the interim steps? What are the best  
15 interim steps and - and when you look at this CSO  
16 policy and - and what it prescribes for communities  
17 to do in development of longterm control plan,  
18 they're not going to be able to rearrange their  
19 facts in the way to avoid showing what's the best  
20 steps right now to take. What the best steps are  
21 going to be later to take and to lay out a path with  
22 interim steps is going to make sense. And I think  
23 Staff feel comfortable with the fact that they can  
24 work with communities to ensure that what they  
25 submit is a reasonable plan that it's - it's

1 aggressive, but not too aggressive. That it - that

2 it sets forth hitting the priorities where they can,  
3 where they should based on what funding mechanisms  
4 are in place, what technologies are currently in  
5 place, what the conditions are in each community.  
6 And we really that the focus should be on that.  
7 Making sure that we've got the right interim steps  
8 in place and the right sequence of steps, rather  
9 than trying to defend or - or trying to avert the  
10 need for meeting - achieving, you know, the  
11 achievings or achieving of water quality standards  
12 by twenty years. That's sort of a - it's a deadline  
13 that tends to sway the discussion away from what it  
14 really should be in our minds.

15 CHAIRMAN HERRMANN: Right. Yes, sir?

16 MR. MELLEM: Mr. Chairman, Jim Mellem with Kansas City,  
17 Missouri. I did not check the box that would  
18 address the Commission. I guess with your approval  
19 or request I would like to amend that and have an  
20 opportunity to address the Commission.

21 CHAIRMAN HERRMANN: Just sprinkle holy water on you  
22 and make you official.

23 MR. MELLEM: Okay, thank you. To go back to Ted's  
24 comment on Paragraph E where he talks about why is  
25 it necessary to have in there that compliance - a

1 compliance is complete and meeting the nine minimum  
2 controls in the longterm control plan development in  
3 implementation. It's our feeling that because of  
4 the amount of money involved in spending this or  
5 implementing this CSO control policy, if there are  
6 other requirements to be made for us to be in  
7 compliance, then we would like to have those  
8 itemized and identified and then we can discuss  
9 that. As the CSO policy is written, we must comply  
10 with the CSO policy so all we doing - recommending  
11 in this - in these regulations is to just clearly  
12 state that that if we comply with this rule that we  
13 are in compliance with the CSO policy and there are  
14 not other things that are unknown out there that we  
15 have to comply with. The second point that Ted made  
16 was on C4 - Paragraph C4 where he talked about the  
17 permit and sort of rubber stamping of the permit by  
18 - by the Agency. What - the way this is written and  
19 - and the way the longterm control plan is developed  
20 is there is a schedule in the longterm control plan.  
21 And that control plan is submitted to DNR into EPA  
22 and as all documents of this nature are, there is a  
23 back and forth. The Agencies have questions. Why'd  
24 you do this? Why'd you do that? How is this?  
25 These are discussed. Changes are most likely made

1 to the document and then there is an agreement to  
2 the document and so once the control plan is  
3 approved, that has a schedule in it. And what this  
4 is saying is that that schedule that's in the  
5 controlled - excuse me - in the approved control  
6 plan is then adopted into the permit. So that the  
7 same schedule that's in the permit is one that's in  
8 the agreed upon control plan and you don't have  
9 agreed to a schedule in the control plan and then  
10 have a different schedule in the permits. I think  
11 that's what that wording tries to clarify. And  
12 lastly on the twenty-year deadline, there is a  
13 schedule in the longterm control plan and the CSO  
14 policy allows for and respects the very ability  
15 within the communities that we've been talking about  
16 here. And there is public involvement in  
17 development of that schedule because it's - it's not  
18 only putting pipe in the ground as Tony implied, but  
19 it's only paying for that pipe in the ground and  
20 whether it's just like buying a house. If you buy a  
21 house on a twenty-year mortgage or a thirty-year  
22 mortgage, that - that affects how much - that check  
23 has - you have to write out every - every month.  
24 And so that becomes the affordability issue, which  
25 goes into the schedule and that discussion of



1   affordability issue that Ken made mention of that  
2   document is part - in parcel of how the schedule is  
3   developed and how that negotiation goes with DNR and  
4   EPA in having an approved control plan.  So, having  
5   an arbitrary number in - in -in the regulation, we  
6   feel, perhaps, is misleading because that very  
7   detailed effort is done in developing of the control  
8   plan and then also in the discussions and  
9   negotiations with DNR and EPA for approval of that  
10  control plan.  Then once the control plan is  
11  approved as noted in these regulations, then  
12  enforceable order or agreement is made for execution  
13  or implementation of that control plan.  So, we  
14  believe there are adequate safeguards within the  
15  policy as proposed to make sure that the schedule is  
16  reasonable, both from affordability basis and also a  
17  - an environmental protection basis that - that we  
18  don't need to have a twenty-year - an arbitrary  
19  twenty-year number within - within the policy.  And  
20  then I know EPA says that their point of departure  
21  is fifteen years for other cities - or for EPA to  
22  have control plans, but some of these cities have  
23  been working with CSO's for twenty or thirty years.  
24  And if you ask EPA if there are any significant  
25  cities that have met a fifteen-year timeframe or

1 have - or in compliance with their longterm control  
2 plan right now or have completed their longterm  
3 control plan, I - I believe the answer is no. So,  
4 again, by putting an arbitrary number in - in there,  
5 that takes away the site-specific conditions we  
6 think is - is misleading to - to the public and  
7 there are safeguards built within the existing - or  
8 the proposed regulations to - to address that.  
9 Thank you.

10 CHAIRMAN HERRMANN: Thank you, Jim. I have one  
11 other comment, Phil, but tangential item that you  
12 mentioned in your presentation. That being the  
13 necessity for a permit for offline detention ponds.  
14 It might seem that you imply that in order to  
15 relieve a situation, you may dig a hole in the  
16 ground and provide some offline detention. When a  
17 situation gets severe enough, that pond's going to  
18 overflow and go to the creek. I say that's a  
19 function of design and investigation before you  
20 design properly to design it fully and properly that  
21 it won't overflow and I would discourage any idea of  
22 - of permits required for offline detention rather a  
23 thorough and severe investigation and design - and  
24 the design requirements. Anything else from the --  
25 COMMISSIONER PERRY: Yes, Mr. Chairman, I would just

1 like to reiterate what the gentleman from Kansas  
2 City just said about the importance of having that  
3 Section E in there. Time and time again in our  
4 rules, we're expected to know that there is  
5 something in some other chapter in some other place  
6 that we're just supposed to magically know about and  
7 this is solving that problem. This is not a speed  
8 limit sign where there is one rule in one place.  
9 Our rules are overrun with sections here and  
10 sections there that may or may not apply. This  
11 simply tells anyone working on this or any of their  
12 attorneys this is as far as I need to go. I need to  
13 do this, this, this. Here's my checklist and I  
14 think that is a very important provision.

15 CHAIRMAN HERRMANN: Does that - does that  
16 sufficiently confuse your - your efforts, Phil?  
17 MR. SCHROEDER: Actually, it helps a great deal.  
18 Really, we came here today with the idea of hoping  
19 to understand better or clearly whether or not we  
20 are prepared to present a rule - draft rule - to the  
21 Clean Water Commission to seek their approval to  
22 file with the Secretary of State's Office. And  
23 after we've first discovered whether or not we have  
24 to do Regulatory Impact Report, we - that's really  
25 our next step. So, from what I've heard today, I

1 think what we'll probably proceed to do is go ahead  
2 and try to finalize this rule. Discuss with those  
3 that can help me understand whether or not a  
4 Regulatory Impact Report is necessary and then bring  
5 that report back with the draft rule to the Clean  
6 Water Commission as soon as possible for your  
7 approval to begin the process of rulemaking. And I  
8 see a few nods in the --

9 COMMISSIONER PERRY: Do you need a motion to  
10 proceed?

11 MR. SCHROEDER: No, I mean - I mean that's the way -  
12 I'm just telling you that's the way I'm going to  
13 proceed unless I hear more from you.

14 CHAIRMAN HERRMANN: Would you consider the work of  
15 the CSO work group as completed at this point?

16 MR. SCHROEDER: On the CSO issue, yes. Although I'd  
17 like to bring the same group back, I think they're -  
18 they're perfectly suited to help address a number of  
19 other wet weather issues - storm water issues that I  
20 think we need to continue to look at.

21 CHAIRMAN HERRMANN: Right, right. That's what - for  
22 what I know, they have given valuable assistance and  
23 guidance in the past and I think it would be  
24 judicious to have them continue in those efforts in  
25 seeking their guidance.

1 MR. SCHROEDER: I agree.

2 CHAIRMAN HERRMANN: These are the people that deal  
3 with the situations day-to-day.

4 MR. SCHROEDER: Right.

5 COMMISSIONER HARDECKE: Chairman Herrmann mentioned  
6 the water quality and the affect of these CSO's. Do  
7 you have data on all of them to show if there is a  
8 degradation of water quality after or for an  
9 extended period after these high water events where  
10 you have an overflow?

11 MR. SCHROEDER: No, we do not. In fact, I don't  
12 think we're prepared to tell you exactly what the  
13 impacts are from the CSO's with respect to water  
14 quality. Some communities - I mean, it's  
15 substantial amount of overflow during certain wet  
16 weather events, which, I think, through our best  
17 professional judgement, we would determine that they  
18 - they are having affects.

19 COMMISSIONER HARDECKE: So then, on the other hand,  
20 some of the them may not have.

21 MR. SCHROEDER: Right, but, you know, the question  
22 is, how many times during the year do these events  
23 cause water quality exceedances and such. We're not  
24 really able to tell you that. Now, with some of the  
25 longterm control plan implementations, we'll be able

1 to collect some more data and find out more  
2 specifically what kind of affects some of these  
3 controls have because the ultimate goal, as we've  
4 all been talking about, is meeting water quality  
5 standards. The only way to know that is actual  
6 monitoring of the streams below the --

7 COMMISSIONER HARDECKE: I think it's important that,  
8 you know, before we ask cities or whatever entity  
9 we're talking - referring to - to make these  
10 substantial investments, we need to know if there is  
11 any water quality problems --

12 MR. SCHROEDER: And that's why we need to - excuse  
13 me - that's why we need to give them the time to  
14 develop these longterm control plans and look at  
15 those issues carefully with us.

16 COMMISSIONER HARDECKE: Right. We could throw a lot  
17 of money at the problem that doesn't exist.

18 CHAIRMAN HERRMANN: Okay, I've just been handed a  
19 note that the Director Doyle Childers has joined us and  
20 has an extremely busy schedule. I'd like to ask the  
21 Director to give us a few words of guidance and  
22 advice and counsel.

23 **DIRECTOR CHILDERS:** That's a dangerous request.  
24 Well, thank you, Mr. Chairman, and members of the  
25 Committee - or the Commission. I do appreciate the

1 - the chance to visit with you a little bit and say  
2 thank you, again, for the work you do. I don't get  
3 a chance to sit on these very often so I was glad to  
4 have a chance to at least catch part of the meeting  
5 today. The one thing I would mention we're glad to  
6 have you in this building and for the folks that are  
7 visiting, as well as yourselves, I know the - the  
8 parking may not have been the most convenient in the  
9 world and you may know that back some five years ago  
10 it was planned to have a parking garage down here  
11 that with the budget situation over the last four or  
12 five years has kind of interrupted that plan  
13 somewhat. But I - I assume that when the Health  
14 Department gets their building finished that we'll  
15 see some parking garage put in. I think there's a  
16 spot located over here somewhere between us and the  
17 prison wall that it's supposed to be put in. So,  
18 hopefully some time in the future we will see some  
19 convenient locations for parking and everything and  
20 I appreciate everyone's patience with that. I had  
21 wanted to talk about two or three things this - this  
22 morning. One is, of course, our permitting. Water  
23 permits will be up. Both drinking water and waste  
24 water will be coming up, actually expire, I guess, a  
25 year from - well, two years from now, a year from

1    this next session and we're wanting to try to get  
2    something moving on that issue to renew those.  
3    Those come up every seven years and, of course, you  
4    may or may not be aware, last year we had hazardous  
5    waste, the solid waste, several of those fees that  
6    were renewed by the Legislature and signed by the  
7    Governor and we need to do that because then now, I  
8    guess, it's roughly six years since those were  
9    renewed the last time. And each time we do them we  
10   need to look ahead for another seven years so it's a  
11   little hard to have that. A crystal ball would be  
12   perfect when you're trying to set your permits and  
13   your permit fees out there, you know, over a period  
14   at this case, it, you know, another seven years from  
15   where we're at. I think the preliminary numbers  
16   show that somewhere around twenty-five percent is  
17   probably the amount that it would take to get back  
18   to where we were at the time these were renewed six  
19   years ago. And I'm sure that also looks out ahead  
20   to try and adjust maybe a percent or so a year, I  
21   don't know, for the next seven years. That's going  
22   to be a challenge, obviously, as we go through.  
23   It's going to take a lot of work. We'll be trying  
24   to get as much information together and be prepared



25 for that bill when - when it's filed this year in

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1 the Legislature. We know that we're going to have  
2 some challenges in dealing with all the different  
3 water issues. There's everything from, as you've  
4 mentioned here, with the CSO's, the SSO's, some of  
5 the other major issues out there. Obviously, the  
6 water quality issues that came down the last few  
7 years are going to impact this a great deal on how  
8 we deal with all the different permits that are  
9 required and what the correct amount of that fee  
10 should be. One other area that I'm interested in  
11 discussing somewhat is the ability to have or  
12 maintain laboratory service out in the more rural  
13 areas of the state. As you know, most of those have  
14 been consolidated down and I have two - two worries  
15 about the consolidation of lab services in one  
16 location. One is the convenience and the cost to  
17 the consumer who must otherwise make contact with a  
18 courier service that is available in the different  
19 parts of the state and that is a time element there  
20 being able to get those samples in. That's - that's  
21 one issue of using a lab for a - lab for different  
22 purposes. Another one has to do with the Homeland  
23 Security issue of if you only have one lab in the  
24 state and you have a disruption of some sort, either

25 a natural one such as earthquake or whatever it may

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1 be, you may have a real problem of getting those  
2 samples in in a timely manner. So, that's one area  
3 you may hear discussed somewhat as we try to talk  
4 about that with the different stakeholders. The  
5 other thing I might mention that you may or may not  
6 be aware that we did do the Moark permit yesterday  
7 and we put a number of things into that permit - a  
8 number of conditions that we hope will help protect  
9 the quality of the environment down in that  
10 sensitive area. The Elk River Watershed, we have  
11 put a condition in there that no uncomposted manure  
12 can be spread in the Elk River Watershed, which we  
13 hope will help alleviate some of the concerns with  
14 our sister state of Oklahoma who is worried about  
15 that and has expressed some concerns. We also have  
16 spread out the permit over a period of time in which  
17 the company will first have to establish a research  
18 station and that is something that they made a  
19 suggestion to us that they thought that would be  
20 helpful and that research station, then, would give  
21 us a better indicator of whether or not how the -  
22 the operation is - is progressing and if it's  
23 meeting the criteria that we've set. If it's

24 protecting the environment in the manner that we  
25 would expect it to and if it doesn't then they do

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1 not get the construction permit to continue their  
2 expansion. And it will be set up in three phases.  
3 The first one will roughly re-establish the - the  
4 amount of birds that they have currently. The  
5 second would add four more houses. That would be  
6 five houses in the first one. Then after being in  
7 operation for six months with the research station  
8 doing the sampling by a third party independent  
9 assessment there, then they would - they would,  
10 assuming that they met the criteria, they would be  
11 allowed to build four more houses. And then after  
12 six months of those, then nine houses being in  
13 operation if they meet the criteria, they can add  
14 the other four houses. And it gives us a way to  
15 actually have a measurement if the technology that's  
16 being proposed will achieve the results we hope it  
17 will and expect that it will. If it doesn't, then  
18 we have a - we have a handle on it that we haven't  
19 had previously. So, we think that will help to  
20 protect the environment and, at the same time, keep  
21 that business still viable in the state. So, those  
22 are the - some of the major things. Obviously,  
23 there are a lot of other things out there that we

24 deal with as we go through the year. A lot of them  
25 we probably don't know about yet and won't find out

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1 until we get surprised by it. But, we'll be doing  
2 our best to do that and, again, wanted to say thank  
3 you to you and like to answer any questions if you  
4 have questions.

5 COMMISSIONER PERRY: You were just talking about the  
6 Moark permit and requiring some sampling before  
7 expansion would be allowed. Is that likely to be a  
8 trend to affect all future permits?

9 DIRECTOR CHILDERS: I don't know that it will be,  
10 but it's a new - a new wrinkle, we might say. I  
11 don't think that it's been done anywhere else at  
12 this time and so it occurred to us when we looked  
13 at. It occurred to us that that would be a very  
14 helpful situation to have on these is to be able to  
15 for a longterm expansion project, that it would be  
16 good to have real numbers and real factual  
17 information -

18 END OF SIDE B, TAPE ONE

19

1 BEGINNING OF SIDE ONE, TAPE TWO

2 DIRECTOR CHILDERS: the ideas because all of us have  
3 opinions and sometimes those opinions are factual,  
4 sometimes they're not. So, I think having a good  
5 third party investigative or - or reporting process  
6 in place will be helpful to us.

7 COMMISSIONER PERRY: And

8

9

10 they're - they're paying a third party  
11 fee for the sampling?

12 DIRECTOR CHILDERS: They will be paying for the  
13 research station and the operation. That will be  
14 their - their expense. I think --

15 CHAIRMAN HERRMANN: Very much appreciate your time  
16 and your attention, sir.

17 DIRECTOR CHILDERS: Thank - thank you very much and,  
18 again, thank you for your efforts on behalf of the  
19 State.

20 CHAIRMAN HERRMANN: Before we proceed further, maybe  
21 there's a need for some relief.

22 MR. GALBRAITH: If I could, this might be a good  
23 opportunity again to remind folks, the building  
24 folks have asked us to if you're - if your car is

25 parked at the entrance to this parking lot out here,

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1 it blocks the shuttle bus. It can't get through, so  
2 if you would move your car, it would be greatly  
3 appreciated. Thank you.

4 CHAIRMAN HERRMANN: Take about five minutes. Think  
5 the restroom can accommodate that many people at one  
6 time?

7 (SHORT BREAK)

8 CHAIRMAN HERRMANN: Call the meeting back to order,  
9 please. Before we proceed, I think we have a - a -  
10 Mr. Galbraith would like to make an introduction.

11 MR. GALBRAITH: Yeah, I'd like to do - introduce  
12 Richard Moore. Richard, would you stand? Richard  
13 Moore. We're still mourning the loss of Amy  
14 Davenport from the Department. She's gone onto -  
15 onto bigger and better things, but - but - well, I  
16 shouldn't say that, but different things, more  
17 appropriately, and we're very happy, though, to have  
18 Richard Moore as our new attorney in the Division of  
19 Environmental Quality. He will be working on water  
20 issues. Most recently, Mr. Moore was with the  
21 Missouri Tax Commission and he has a very long and -  
22 and impressive resume and we're certainly happy to  
23 have him on board. Welcome, Richard.

24 CHAIRMAN HERRMANN: We will now move to Tab Three in

25 the agenda booklet, which is the **FY06 SRF Loan**

4

1 **Intended Use Plan Revision** relative to the  
2 Metropolitan St. Louis Sewer District. John Fraga,  
3 Financial Assistance Center.  
4 MR. FRAGA: Good morning. Yes, my name is John  
5 Fraga and I work with the Water Protection Financial  
6 Assistance Center and one of my responsibilities is  
7 to - one of my responsibilities is to work with the  
8 Metropolitan St. Louis Sewer District and coordinate  
9 between the Metropolitan St. Louis Sewer District  
10 and the Department of Natural Resources and help  
11 them fund eligible projects through the SRF program.  
12 The issue today is basically to the Missouri River  
13 Waste Water Treatment Plant project is on the  
14 intended use plan - the 2006 Intended Use Plan. And  
15 it is on for a designated amount of \$29,100,000.  
16 The - we're looking for to revise the Intended Use  
17 Plan up to - to increase their amount for  
18 \$14,300,000. Basically, they have a total eligible  
19 project cost of about \$42,400,000. Basically,  
20 before you consider this issue, I guess I would like  
21 to talk about a - a few of the circumstances around  
22 the - this project and a little bit of history of  
23 it. Back in - overall, over the past year or two,

24 I've been working with Metropolitan St. Louis Sewer  
25 District to fund several of their projects that

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1 we've had in on the Intended Use Plan. And during  
2 that time, I guess, in 2004, they were able to pass  
3 a \$500 million revenue bond and that has been the  
4 primary funding source that we've been working with  
5 them on and they've been doing some projects through  
6 the SRF program for eligible funding. Basically, in  
7 - I guess the Missouri River Project about a year  
8 ago today almost, we - we brought that up to the  
9 fundable list on the Intended Use Plan of, I guess  
10 it would be '05, and the Missouri River Project has  
11 met all the Intended Use Plan requirements based on  
12 submitting a facility plan and, of course, having a  
13 dead instrument in place. So, the project is very  
14 ready to go for funding and we would like to fund  
15 the project in 2006, the spring, in the SRF Leverage  
16 Loan Pool. The - the project - we actually did fund  
17 a portion of the project in the spring of '05.  
18 Phase One, which was for \$6.8 million and, I guess  
19 to back up a little bit, when we brought this  
20 project onto the fundable list about a year ago, we  
21 knew at that time that the project would - would -  
22 the project cost were going to be greater than what  
23 they were on the Intended Use Plan and at that time,



24 of course, we had quite a bit of competition for  
25 available funds that were uncommitted. And it was

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1 our recommendation to not ask for an increase at  
2 that time. So now, due to the fact that the - the  
3 Phase One has been funded and Phase Two is eligible  
4 for funding and meets valued requirements to be on  
5 the fundable list and they are on the fundable list  
6 for - for \$29.1 million, on your - in your agenda  
7 packet, there's - I believe, Page Two Twenty-three  
8 gives you an update of the - of the updated version  
9 of the fundable list for the Intended Use Plan for  
10 '06. And if you'll look on your second chart there,  
11 it shows that the fundable projects with the  
12 approved dead instrument and secured facility plan  
13 submitted, there's a balance remaining of about  
14 \$46.8 million dollars and from that amount,  
15 basically, would be the source of - of this  
16 increase. And just for future reference here, also  
17 if you go to the next page, it does show our  
18 contingency projects that are projects that are on  
19 their way that are meeting the Intended Use Plan  
20 requirements to be funded, but based on the project  
21 development and the available funds, we're showing a  
22 balance there or the need for \$21 million dollars -

23 \$21.4 - so, even if we do fund the - the MO River  
24 increase, there - and so if we fund the MO River  
25 increase plus showing even the contingency projects,

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1 there's still going to be a balance remaining of  
2 uncommitted funds. So, really, based on, I guess,  
3 that information and the status of the MO River  
4 Project, basically myself and the staff feel that we  
5 want to go forward and - and bring the increase to  
6 the Metropolitan St. Louis Sewer District for this  
7 MO River Waste Water Treatment Plant Project.

8 CHAIRMAN HERRMANN: Thank you, John. Any questions  
9 of - okay.

10 COMMISSIONER HARDECKE: Why was that amount  
11 requested or what was the background on - had they  
12 originally requested up to that amount and then you  
13 only funded portion of it earlier or -

14 MR. FRAGA: Yes, like I mentioned, about a year ago,  
15 actually, we were here at the Commission meeting and  
16 we had a - another project that was on the list and  
17 we replaced it - the Missouri River Project was on a  
18 planning list and we were able to move it up because  
19 of their completion of their request for  
20 fundability. We brought it up but at that time, it  
21 was only on for a - a small - it was a very early  
22 pre-estimated cost at that point because it was a

23 planning project when they actually applied for the  
24 funds. So, since then, of course, the project  
25 development has - has increased and - and now

8

1 there's a - well, or even at that Commission  
2 meeting, we realized the need was greater than that  
3 original estimate and basically we didn't increase  
4 it at that time because there were other projects  
5 that were on the contingency list that we felt that  
6 we could go ahead and fund them and wait for the new  
7 contingency plans to come out and see how the  
8 available funds were. Did that answer some of those  
9 questions?

10 COMMISSIONER HARDECKE: Yeah, now you mentioned that  
11 they passed a \$500 million dollar bond issue. So,  
12 is that what's going to be used to repay this or is  
13 that in addition to this money that's going to be  
14 spent on the project?

15 MR. FRAGA: We have been working with the  
16 Metropolitan St. Louis Sewer District. They passed  
17 the \$500 million revenue bond in the spring and  
18 there are several projects they have brought to the  
19 SRF and that is the source of funds that they are  
20 using for the - the dead instrument to - for the SRF  
21 participation.

22 COMMISSIONER PERRY: Is there any review on the part  
23 of the Department whether this cost is inflated?  
24 You know, they're coming back asking us for more  
25 money and there's two questions I have. One is can

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1 we afford it and I think you've answered that one.  
2 The second one is, is this project the amount  
3 they're requesting accurate?  
4 MR. FRAGA: We, of course --  
5 CHAIRMAN HERRMANN: I think we have a representative  
6 of MSD. Maybe we can --  
7 COMMISSIONER PERRY: Oh, okay. That would be fine.  
8 MR. FRAGA: Sure, but just on DNR's behalf, you  
9 know, naturally, as - as a project develops, we do  
10 review the project and - and the original - the only  
11 reason - they're not actually asking for an  
12 increase. We knew these project costs - the  
13 original estimate at \$35.1. Over a year ago, we  
14 knew that wasn't accurate back then, but we didn't  
15 come to the Commission to ask for a revised Intended  
16 Use Plan at that time. The process of - of the  
17 Intended Use Plan is the projects will submit an  
18 application for funding and that can be at a very  
19 preliminary stage of project development. So as the  
20 - from the time you actually get placed on the  
21 Intended Use Plan to maybe closer to funding the

22 project, a lot more figures can become accurate.  
23 And so there is some variability, but - but we  
24 actually did know that that 35.1 wasn't going to be  
25 accurate at the original time, but we are very -

10

1 again, as we do - we do review the projects, so we  
2 do take a look at the accuracy of the estimated  
3 project costs. We do rely on the applicant, too, to  
4 do that for us.

5 COMMISSIONER PERRY: Okay, and the other question I  
6 have kind of goes back to the list and the process  
7 of preparation. It seems to me that sometimes we  
8 have these very huge projects in the middle of a  
9 list with a lot of little towns where the entire  
10 amount of everybody below them is less than this  
11 request. How many of the smaller communities and my  
12 thought is they actually control - the smaller  
13 communities control some vast areas of land and  
14 water uses that would be potential for pollution.  
15 How many small towns or smaller projects will not be  
16 able to be done because of this increase?

17 MR. FRAGA: Well, that is - that is what I was  
18 pointing out. Basically, we will not be, you know,  
19 taking money from other communities based on this  
20 increase because there are available funds.

21 COMMISSIONER PERRY: Okay, I thought I was following  
22 on that, but then I saw that we have a balance in  
23 negative digits.

24 MR. FRAGA: If you look, basically - well, if you  
25 look at the first - the first list, of course, is

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1 our carryover from our last Intended Use Plan and  
2 then when you remove that balance, then you have a -  
3 have a need for the '05 Intended Use Plan and when  
4 you're all said and done with the projects that have  
5 met the requirements to be funded, there still shows  
6 a balance of funds remaining. So if there are any  
7 other communities that are interested in - in  
8 applying for the funds and / or have applied for the  
9 funds, it's - it's the way our - our Intended Use  
10 Plan is set up it's not so much - you have to still  
11 achieve a certain project development to be eligible  
12 for funding. And so, based - and then if you -  
13 also, we have our third list is a contingency, which  
14 are projects that have developed and are waiting -  
15 they're contingency based on funds available,  
16 basically.

17 COMMISSIONER PERRY: So when you had \$46 million and  
18 that contingency projects is \$21.

19 MR. FRAGA: Mmm-hmm. And - and basically, the  
20 contingency projects are - are the ones that are

21 smaller communities that are on the radar, somewhat,  
22 for funding and that meet the SRF requirements. And  
23 then we'd possibly be able to fund them. The - the  
24 rest of the list below are - are projects that have  
25 not made advancement to be fundable.

12

1 COMMISSIONER PERRY: Okay, and that's sort of those  
2 are the ones that are on the horizon.  
3 MR. FRAGA: Yes and no. They may never even come in  
4 for funding. They've - they've submitted an  
5 application, basically, is all that means. The  
6 planning list is somebody that submitted an  
7 application and that's just about it, really. And -  
8 and you have to complete the next phase of project  
9 development to - to move into the contingency and /  
10 or fundable categories. And - and so there's still  
11 is going to be a balance remaining even after we  
12 fund the increase for the Missouri River Waste Water  
13 Treatment Plant and we - we still are eligible to  
14 fund the contingency list, there'd still be a  
15 balance remaining for somebody possibly to work  
16 towards that from a planning.  
17 COMMISSIONER PERRY: And that amounts to like about  
18 \$8 million dollars? Something like that?  
19 MR. FRAGA: Sure, sure.

20 COMMISSIONER PERRY: Okay.

21 COMMISSIONER EASLEY: Well, do you have a number of

22 applications pending? I assume that these

23 applications come in on a regular basis.

24 MR. FRAGA: Yes, the - the Intended Use Plan has

25 been - over the last year or two, we have been

13

1 changing the structure of it and I'm actually

2 probably not the best person to describe that - that

3 structure of it.

4 COMMISSIONER EASLEY: Well, I share the same --

5 CHAIRMAN HERRMANN: I - I'll wait for your - your

6 buddy sitting behind you.

7 MR. FRAGA: Oh, here he is.

8 CHAIRMAN HERRMANN: I'll put him on the hot spot.

9 MR. FRAGA: Doug Garrett is actually more

10 responsible for the structure of our Intended Use

11 Plan and he would be able to better answer

12 questions, but, basically, I mean, we're funding

13 this project and the reason that myself and the

14 staff of the SRF program feel that we go forward

15 with it is that we're not jeopardizing any other

16 smaller communities or taking monies from any other

17 projects that would be good projects.

18 CHAIRMAN HERRMANN: I suggest we hear from MSD on

19 the subject of the agenda and then I want to put



20 Doug on the hot spot after that. We have a request  
21 from Karl Tyminski.  
22 MR. TYMINSKI: Good morning. My name's Karl  
23 Tyminski. I'm the Secretary / Treasurer at MSD.  
24 Let me take a few moments to kind of give - put this  
25 request in perspective and MSD's philosophy with

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1 respect to the SRF. For a number of years, MSD had  
2 financed its construction on a pay-as-you-go basis.  
3 In February, 2004, we passed a \$500 million dollar  
4 bond issue. At that point in time, we - we sought  
5 to use that bond issue both for internal funding  
6 sources, our own set of bonds, plus for the SRF as  
7 repayment line for the SRF. But we also recognized  
8 a couple of other things. The first thing we  
9 recognized is that we are a community and we are a  
10 citizen of the state just like Kansas City, Moberly,  
11 any other community on that list and we also  
12 recognize that our needs are significant with  
13 respect to other communities in the state. So, what  
14 we did internally is we targeted certain projects  
15 that we felt would be a good match both for the SRF  
16 purposes and our purposes. Those projects were  
17 first our Lower Meramec Treatment Plant. We -  
18 that's a \$216 million dollar plant at the time.

19 Currently, we project that plant to be \$225 million  
20 dollars, so our initial estimate was under. We  
21 borrowed through the SRF. We borrowed \$160 million  
22 dollars through the SRF. The loans are in place.  
23 The construction's ongoing. We intend to meet our -  
24 working toward meeting our December 31st, 2006,  
25 deadline. The second project we looked at was the

15

1 MO River Project. The MO River Project is the one  
2 before you today. It has two phases to that  
3 project. The first phase was a renovation phase  
4 that we budgeted at \$6.8 million dollars and the  
5 second phase is a wet weather headworks expansion  
6 phase. Phil Schroeder, in a technical way, very  
7 nicely explained that when he talked about INI,  
8 building capacity to handle the INI. That's what  
9 this project's all about. That we had budgeted at  
10 \$35 million. The \$6.8 million dollar project, we  
11 just had a construction bid on the actual  
12 construction of that. The construction part should  
13 be budgeted \$3.6 million on. That construction  
14 actually came in at \$5.6. We are not coming back  
15 and seeking additional funds for that. We'll handle  
16 that through our own sources. But to get to the  
17 point earlier about how are the estimates running,  
18 actually, the estimates are running - the actuals

19 are running above our estimates at this point in  
20 time. Moving to the second - the wet weather  
21 expansion phase. We had originally targeted that to  
22 be \$35 million dollars. Mindful of the other  
23 communities in the state, at the - at the meeting  
24 last year, we decided to pull off our cold water  
25 plant. It just didn't meet the requirements that

16

1 you were seeking. It was not a good match for  
2 funding. And we replaced that with our MO River  
3 Plant. The MO River Plant, we felt, would be \$35  
4 million at the time. We went in with \$29 million,  
5 so we went in, basically, \$6 million dollars short  
6 at that point in time. The rest of the \$14.3  
7 million dollars represents the completion or the  
8 definition of the design at the time that we  
9 estimated the \$35 million versus the \$43 today, plus  
10 there's some additional cost involved with increased  
11 concrete costs, increased fuel costs, just, in  
12 general, inflationary costs. The third plant we had  
13 targeted for you and that will be coming down the  
14 line, is our Lemay Plant. That's a - a wet weather  
15 bypass. We're trying to avoid CSO's into the lower  
16 - or actually, bypassing it to the Lower River  
17 Dupare and ultimately to the Mississippi River. So,

18 we had a target of three plants that would be coming  
19 back to the SRF in the first phase of our \$3.7  
20 billion dollar program. This - the - what's before  
21 you is the remaining funding for the MO - Missouri  
22 River Phase. I had, at some point in time, tends to  
23 come back to the Lemay Phase, but our - our position  
24 has been we're not trying to displace other - other  
25 communities in the state, but if there's funds at

17

1 the end of the day, we could certainly put them to  
2 use. Thank you very much.

3 CHAIRMAN HERRMANN: Thank you, Karl. Any other  
4 questions on this Staff recommendation? Bearing  
5 none, the Chair would call for a motion to follow  
6 Staff recommendation and place the Missouri River  
7 Plant - MSD - on the fundable list IUP.

8 COMMISSIONER PERRY: So moved.

9 CHAIRMAN HERRMANN: Got a motion. Do we have a  
10 second? I think it's inappropriate for the Chair to  
11 second that motion.

12 COMMISSIONER MINTON: I'll second the motion,  
13 Chairman.

14 CHAIRMAN HERRMANN: Thank you, Davis. Okay, it's  
15 been moved and seconded to follow the Staff  
16 recommendation. Please call for the vote, Marlene.

17 MS. KIRCHNER: Commissioner Kelly?

18 COMMISSIONER KELLY: Yes.  
19 MS. KIRCHNER: Commissioner Minton?  
20 COMMISSIONER MINTON: Yes.  
21 MS. KIRCHNER: Commissioner Perry?  
22 COMMISSIONER PERRY: Yes.  
23 MS. KIRCHNER: Commissioner Hardecke?  
24 COMMISSIONER HARDECKE: Yes.  
25 MS. KIRCHNER: Commissioner Easley?

18

1 COMMISSIONER EASLEY: Yes.  
2 MS. KIRCHNER: Chairman Herrmann?  
3 CHAIRMAN HERRMANN: Yes. Motion passes. Okay,  
4 Doug, are you ready for the hot seat? Particularly  
5 at the contingency projects, facility plants  
6 admitted list, and it's got problem code and in the  
7 case of Sullivan, for instance, it has  
8 one-three-five, but I don't find a legend which  
9 defines what one, three and five are.  
10 MR. GARRETT: I'll - I'll have to go off the top of  
11 my head. We have the various problem codes are  
12 there is a water pollution problem existing. And if  
13 there is, then to be eligible for the SRF, there  
14 would have to be an enforceable agreement with that  
15 entity. Be it a Schedule of Compliance in the  
16 permit or some other abatement - or dissent decree

17 in place. There is a potential for a water quality  
18 problem to occur if no action is done. There was  
19 public health is a problem code and so we - we try  
20 to wrap those up and code them so that we know  
21 specifically what type of problem we are addressing  
22 with the project.

23 CHAIRMAN HERRMANN: Okay, you - I may be asking the  
24 wrong person in asking you, Doug, but the last  
25 column is Initiation of Operations and it's got

19

1 09-2. I assume that's 2009.

2 MR. GARRETT: Correct. Second quarter of the State  
3 Fiscal Year of 09.

4 CHAIRMAN HERRMANN: Okay, going back several months  
5 ago, we had repeated and lengthy conversations about  
6 the City of Sullivan --

7 MR. GARRETT: Yes, sir.

8 CHAIRMAN HERRMANN: and sensitive to implement and  
9 the - the permit that was to be issued. At that  
10 time, they proposed a completion plan in which the  
11 facility plan was to be undergo a review by DNR from  
12 11/04 to 11/05. And it was our suggestion that that  
13 was inappropriate. We didn't need a year and I  
14 think Staff agreed with us at that time. Their  
15 proposal was to complete their initial steps towards  
16 construction ending up at December of '08 and the

17 Commission said, at that time, now, we wouldn't go  
18 any further than '07. December 31st of '07. And  
19 now I see on the list that it's an initial operation  
20 of '09.

21 MR. GARRETT: Right.

22 CHAIRMAN HERRMANN: Do we have a miscommunication?

23 Do we have - and what's the status of their review  
24 by MS - by DNR?

25 MR. GARRETT: Well, there is no miscommunication.

20

1 The - the initiation of operation dates were not  
2 revised in this printing.

3 MR. GALBRAITH: This represents the approved IUP.

4 And this - this was just distracted from the  
5 approved IUP in that discussion and the decision on  
6 Sullivan came after that so it wasn't updated.

7 CHAIRMAN HERRMANN: Okay, alright. So what's the  
8 status of that project today?

9 MR. GALBRAITH: The status is - and I was -  
10 actually, this was in my notice to give during the  
11 Director's update. The status is that they - we  
12 have their - we have almost - we have reviewed their  
13 facility plan and - and are this close to approving  
14 it, but we now understand that Sullivan does not  
15 wish to use SRF and they've just recently

16 communicated that - that to us in the last week, so  
17 we're going to have to get with Sullivan and figure  
18 out what they're going to do and - and, you know,  
19 get them - you know, get them back on course with,  
20 you know, making sure that they're going to get  
21 their financing in place so they can meet the  
22 Commission's deadline in their - in their variance.

23

24 MR. GARRETT: And having said that, typically we -  
25 to remove someone from the IUP, we request a formal

21

1 request to come from the community. In as much, the  
2 - the indication that we have that Ed eluded to came  
3 via e-mail and we decided internally that we are not  
4 going to remove Sullivan from the Intended Use Plan  
5 because as they go down this path, whatever funding  
6 options they may be contemplating, they may not, you  
7 know, come to pass and they may very well have to  
8 come to the SRF to receive funding so we don't want  
9 to jeopardize that opportunity for them.

10 CHAIRMAN HERRMANN: I think it should be conveyed to  
11 the City of Sullivan that the Commission was very  
12 adamant in recognition of the fact that they are  
13 discharging to a losing stream and that the  
14 geological survey has said they have a significant  
15 potential for collapse in that lagoon that they're



16 operating and that the establishment of the December  
17 31st, '07 date was, in our estimation, fixed.

18 MR. GALBRAITH: We - we agree one hundred percent  
19 and I asked Staff to set up a meeting with Sullivan  
20 as soon as possible so that we can reiterate that -  
21 that deadline and we would be happy to involve the  
22 Chairman in that meeting if you - if you so desire.

23 CHAIRMAN HERRMANN: I appreciate that because I  
24 think we had a - a peripheral conversation at the  
25 time that West Sullivan and some other community

22

1 adjacent were wanting to be brought into the system  
2 - a regionalized system, which is what they  
3 suggested in their review of their facility plant  
4 and I have, in communication with other people,  
5 found that on a couple of occasions they have turned  
6 down the City of West Sullivan as joining into their  
7 project.

8 MR. GALBRAITH: It's my understanding that their  
9 facility plan did include West Sullivan.

10 CHAIRMAN HERRMANN: Yes, it did. Okay.

11 MR. GARRETT: If I can address a - a concern of  
12 Commissioner Perry's. I notice you were apparently  
13 looking at the bottom of - of Page Two-twenty-five  
14 there with the - the negative balance. We completed

15 a - what we call a Needs Survey in 2004 and have  
16 submitted documentation and - and to identify the  
17 point source or non-point source needs and cost  
18 associated to correct or satisfy those needs to EPA.  
19 And those numbers are currently going through the  
20 Federal process and reviewed by OMB and then  
21 ultimately presented to Congress. Our initial  
22 report indicated that our needs for the State were  
23 approximately \$5 billion dollars. We have  
24 historically received wonderful support from MSD and  
25 Kansas City, St. Joe, the larger communities that

23

1 have the staff to assist us in identifying these and  
2 getting our - our number up, if you will. Those  
3 needs, then, go into Congress Congressional  
4 discussions on the funding levels that we receive  
5 for the SRF. MSD, many years ago, represented the  
6 neighborhood of seventy-five to eighty percent of  
7 the State's total needs and fortunately for us, they  
8 have seen fit - and this goes back to our grant days  
9 - of not requesting every dollar that they needed to  
10 do their projects to afford other smaller  
11 communities the opportunity to seek funding. And  
12 we've chipped away at that. I believe this last  
13 time MSD's needs wound up being about approximately  
14 sixty percent of the total needs that - that we

15 reported. And - and here again, you know, they  
16 could probably make a case - and whether anybody  
17 would go along with it or not is another story - but  
18 they could make the case that, "Okay, we have the  
19 need. You know, we could document all this through  
20 our various planning documents. We want all that  
21 money." But yet, we have a priority point system  
22 that as Chairman Herrmann pointed out several  
23 meetings ago was woefully outdated. They chose that  
24 fiscally, it gives MSD very low points. So that  
25 though they have projects in the pipeline, they may

24

1 not have priority if a small community with say,  
2 forty-five points - priority points comes in at the  
3 same time as - as MSD would. Well, that small  
4 community with forty-five points would get the funds  
5 before MSD because their priority, which is based on  
6 water quality, is higher and we are in the process  
7 of preparing a rule request to change our priority  
8 point system to bring it more in line with today's  
9 programs. But having said that, there will always  
10 be that - those points there that will afford small  
11 communities and that are on sensitive waters or - or  
12 having a - a severe water quality impact on the  
13 State's waters to receive funding and we will

14 certainly continue to work with - with the larger  
15 projects to see what we can do to make sure that  
16 funds are available for those communities.  
17 COMMISSIONER HARDECKE: If you - you use up your  
18 quality contingency projects are funded like \$21  
19 million and \$14, that will leave you a small amount  
20 and you've got \$229 million down here, does  
21 the next fiscal year bring another round of money?  
22 MR. GARRETT: Yes, we're already receiving  
23 applications in preparation for doing another IUP.  
24 When we - that we're kind of scratching our heads  
25 about it at the moment. We received notice with -

25

1 from EPA last week that out of the Federal 2006  
2 budget, Missouri's allotment would be approximately  
3 \$22 million dollars. We're taking another \$7  
4 million dollar hit, if you will, to funding offers  
5 that we have received in the past. In the past it's  
6 been in the neighborhood of \$30 to \$35 million  
7 dollars per year in capitalization grants. This -  
8 the '05 is approximately \$29 million. And so - and  
9 now, we're looking at \$22 million. We don't know  
10 until we have the grant in hand exactly what we're  
11 going to get, but the nature of the State Revolving  
12 Fund is that as communities begin repaying their  
13 loans, and then we have those funds again to loan

14 out.

15 COMMISSIONER HARDECKE: So, what - what is your

16 annual payment back on an average?

17 MR. GARRETT: That I'd have to - to provide you at a

18 later date and we'd be more than happy to - to have

19 those numbers available to the Commission.

20 CHAIRMAN HERRMANN: Okay, thank you, Doug. Now move

21 to Tab Four in the agenda booklet. **Crabtree Corner**

22 **Subdivision Sewage Treatment Plant variance request**

23 to Richard Laux to make the Staff presentation.

24 MR. LAUX: Good morning.

25 CHAIRMAN HERRMANN: Good morning.

26

1 MR. LAUX: On June 10th, 2005, Mr. Delbert Crabtree

2 requested a variance from the requirement to perform

3 a water quality study in order to utilize the

4 alternate affluent limits for non-filtered residue

5 and bio-chemical oxygen demand that are found in our

6 rules. Basically, the current regulations require

7 that we apply the 30-30 standard secondary treatment

8 limits unless there's been a water quality study

9 that documents that the stream would be adequately

10 protected by the larger lagoon limits. The

11 discharge from this facility eventually enters

12 Post Oak Creek, which has - had some concerns about

13 it. The existing three-cell lagoon at this facility  
14 needs to be upgraded and the applicant is requesting  
15 a construction permit in order to upgrade and would  
16 like to use the lagoon limits; however, Staff has  
17 previously developed a waste limit allocation for  
18 the nearby Warrensburg West facility, which also  
19 discharges into the same stream. And, according to  
20 our rules, they've - the limitations that we  
21 developed for the Warrensburg West facility are to  
22 be applied to other facilities that are discharging  
23 to the same stream. So, in the absence of the study  
24 in this particular case that would indicate that the  
25 current limits in the permit would be protective,

27

1 basically, Staff is of the opinion that we would  
2 need to have the lower limitations that we've  
3 proposed for Warrensburg in order to adequately  
4 protect the receiving stream. There's also an  
5 additional concern about a proper continuing  
6 authority regarding the - actually, the existing  
7 permit as well as any future construction permit.  
8 Right now, I believe Mr. Crabtree would not, by  
9 himself, constitute a legitimate continuing authority  
10 under our rules. Staff is therefore recommending  
11 denial of the request and is of the opinion that  
12 connection to the City, which is a potential

13 possibility some time within the next ten years  
14 according to the City, it's in their long-range  
15 plan, which is roughly a ten-year plan, but they  
16 couldn't put a date on when they would be going  
17 through this property up to the airport which they  
18 operate and would then be available to have this  
19 facility connect to it. Basically, if they can't  
20 connect to the City, we felt that a non-discharging  
21 system or advance treatment would be necessary to  
22 adequately protect the receiving stream based on the  
23 waste allocation that was done for Warrensburg West.  
24 So, our recommendation is to deny the request;  
25 however, Mr. Crabtree is here today and would like

28

1 to discuss some of the Staff recommendation with  
2 you.  
3 CHAIRMAN HERRMANN: Thank you, Mr. Crabtree.  
4 MR. CRABTREE: Thank you, Mr. Chairman, and  
5 Commission. I have a letter here that I would like  
6 to pass out to you. I'm not giving a hundred fifty  
7 page book like some. It was mentioned earlier that  
8 about the podunk communities. I feel like after  
9 listening to what's been going on this morning, that  
10 that's where I stand or maybe what many thought of.  
11 I appreciate the opportunity to - to have you

12 consider my request. My wife and I are small  
13 individual developers doing all the developing and  
14 building myself with two employees. The past four  
15 years, I have averaged approximately three houses  
16 per year. I do not anticipate building any faster  
17 than those few years; therefore, I am - I - I feel  
18 this small subdivision would not impact the stream  
19 very much at all. Crabtree Country dumps the lagoon  
20 and it is Crabtree Country, not Crabtree Corners as  
21 - as the other letters have stated. Dumps into what  
22 I would call a dry stream or a wet weather stream  
23 and it's approximately two miles before it gets to  
24 Post Oak. If you could see to - fit for me to install  
25 the aerators in my system, it would do much more for

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1 water quality than spending several thousand dollars  
2 to do a stream study, which I think has already been  
3 done by Warrensburg. The City of Warrensburg was  
4 mentioned as planning to go to Sky Haven, which  
5 would go through my property. It was mentioned that  
6 I didn't have a - a - or a continuing authority. I  
7 do have that here with me and the Department of  
8 Natural Resources should have had it in their files.  
9 I don't know what happened there, but it is  
10 available and I can show it to whoever wants to see  
11 it. In fact, we can make some copies. I didn't



12 bring any other copies. In some of the letters that  
13 I've received as was mentioned awhile ago, the  
14 non-discharge system could be considered. I would  
15 consider that. I'd like to be able to pursue this  
16 thing and I don't know how long that might take to -  
17 to do that, but at the rate of my - that I'm  
18 building - or have been building, even if we had to  
19 reduce my application down to fifty or some other  
20 number, would be - I could do that. They have  
21 indicated that they would like to have option to  
22 reconsider the application - or the permit, even,  
23 after it was offered and that - I would not be  
24 opposed for that - to do that. I would like, in  
25 some way, to be able to go ahead and proceed with my

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1 development and if we could - even if we reduce the  
2 number of houses that - I have seventy-five lots -  
3 or the lagoon was designed for seventy-five lots  
4 originally by putting the aerators in. I didn't  
5 have these funds coming in from other places as has  
6 been mentioned here this morning, so most of this or  
7 all of this I've done out of my own pocket. And  
8 I've been doing it as I could. So, I want to do the  
9 very best that I can in - in maintaining water  
10 control.

11 MR. GALBRAITH: May I ask a question? So, you're  
12 saying you would be willing to consider - go back  
13 and consider a non-discharge system as a  
14 possibility?  
15 MR. CRABTREE: That is a possibility.  
16 MR. GALBRAITH: If that's the case, I might offer an  
17 amended recommendation that we - that we table this  
18 particular variance and I would ask Staff to go back  
19 and work with Mr. Crabtree and his engineer to - to  
20 see if a no-discharge system without the aeration is  
21 feasible, and if it is, then there'll be no need for  
22 a variance and we could solve it in that fashion.  
23 CHAIRMAN HERRMANN: I see you have an engineer.  
24 You're contracting with Bill Marshall?  
25 MR. CRABTREE: He is the one that has been working

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1 on this, yes.  
2 CHAIRMAN HERRMANN: So you would suggest or your  
3 recommendation would be to table this --  
4 MR. GALBRAITH: Table it for today --  
5 CHAIRMAN HERRMANN: and have Staff work with Mr.  
6 Marshall and Mr. Crabtree?  
7 MR. GALBRAITH: And if we reach a solution, we reach  
8 a solution. If not, we'll - we - we'd have to come  
9 back in January and - and present the variance, but  
10 sounds like there might be a solution here that'll

11 suit everybody. Might explore that.

12 COMMISSIONER PERRY: Do we need a motion on that?

13 MR. GALBRAITH: No, the Chairman's --

14 COMMISSIONER PERRY: Kind of withdrawing the

15 request.

16 CHAIRMAN HERRMANN: Yeah, I think we - we should.

17 Have a motion.

18 COMMISSIONER PERRY: I move that we accept the

19 recommendation of Mr. Galbraith to table this to

20 allow Staff to investigate the possibility of a

21 non-discharging structure.

22 COMMISSIONER HARDECKE: Second.

23 CHAIRMAN HERRMANN: Any discussion? Please call for

24 the vote, Marlene.

25 MS. KIRCHNER: Commissioner Kelly?

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1 COMMISSIONER KELLY: Yes.

2 MS. KIRCHNER: Commissioner Minton?

3 COMMISSIONER MINTON: Yes.

4 MS. KIRCHNER: Commissioner Perry?

5 COMMISSIONER PERRY: Yes.

6 MS. KIRCHNER: Commissioner Hardecke?

7 COMMISSIONER HARDECKE: Yes.

8 MS. KIRCHNER: Commissioner Easley?

9 COMMISSIONER EASLEY: Yes.

10 MS. KIRCHNER: Chairman Herrmann?

11 CHAIRMAN HERRMANN: Yes. Thank you, Mr. Crabtree.

12 MR. BRYAN: Mr. Crabtree, could we - the letter that

13 you talked about - the continuing authority letter,

14 is that May 2, 2005, from Mr. Marshall?

15 MR. CRABTREE: Yes.

16 MR. BRYAN: I just want to make sure we did have it

17 - what you were talking about. Want to make sure

18 it's the same one.

19 CHAIRMAN HERRMANN: Move to Tab Five, **Miami R-I**

20 **School District Variance Request.** Richard?

21 MR. LAUX: This is the variance request we presented

22 last time and you preliminarily approved. It,

23 again, involves the use of lagoon limits without an

24 in-stream study that predates the issuance of the

25 permit. We recommended approval with some

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1 conditions. We public noticed your intent to

2 approve it finally at this meeting and did not

3 receive any comments - adverse or otherwise. The

4 Superintendent called me the other day and indicated

5 his mother is in the hospital and given his

6 experience last time where he's - he was pretty much

7 here the whole day, he wanted me to let you know

8 that he was interested in the variance, still, but

9 couldn't make it today. So, he's not here for any

10 questions, but I'll try to answer any if anyone has  
11 any.  
12 END OF SIDE A, TAPE TWO  
13 BEGINNING OF SIDE B, TAPE TWO  
14 MR. LAUX: in the five years that the permit's  
15 issued, that they would have the information by the  
16 inclusion of the - the in-stream monitoring that we  
17 could - we could make an assessment on that issue  
18 prior to renewing the permit. So, in essence, we're  
19 recommending it for a five-year period to correspond  
20 with the permit term, if that's the way this one  
21 goes. There's no guarantee that they will go that  
22 route. They may end up with a non-discharging  
23 system here, also.  
24 CHAIRMAN HERRMANN: Any other questions? The Chair  
25 would entertain a motion relative to the variance

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1 request of the Miami R-1 School District.  
2 COMMISSIONER PERRY: I move the Commission accept  
3 the Staff recommendation to approve the variance.  
4 COMMISSIONER KELLY: Second.  
5 CHAIRMAN HERRMANN: Moved and seconded. Any  
6 argument? Discussion? The motion passed. **City of**  
7 **Macon, ammonia variance request.** Richard?  
8 MR. LAUX: This, again, was a presentation we made

9 last time where we recommended approval of their  
10 variance. This one involves ammonia. We had  
11 another one from Macon that dealt with the CSO  
12 issue. We public noticed your intention to approve  
13 it finally at this meeting. Again, did not receive  
14 any comments. The Staff had recommended approval  
15 with a - some in-stream monitoring and re-opener  
16 clause and are recommending this be issued for a  
17 five-year term consistent with the permit when it's  
18 issued - renewed.

19 CHAIRMAN HERRMANN: Okay, we have a couple of  
20 representatives that want to speak. Trent Stober?

21 MR. STOBBER: Myself and the City are just both here  
22 to provide any information or responses to  
23 questions.

24 CHAIRMAN HERRMANN: Okay. That goes for Dennis, too?

25 MR. STOBBER: Yes.

35

1 CHAIRMAN HERRMANN: Any questions? Discussion?

2 COMMISSIONER PERRY: Do you note - do you have any  
3 objections to the Staff proposal?

4 MR. STOBBER: No, we're supportive of the - the  
5 proposal.

6 CHAIRMAN HERRMANN: The Chair would entertain a  
7 motion relative to the request for the City of  
8 Macon.

9 COMMISSIONER EASLEY: I move that the Commission  
10 accept the Staff recommendation to approve the  
11 variance with the stated conditions.  
12 COMMISSIONER PERRY: Second.  
13 CHAIRMAN HERRMANN: Moved and seconded. Any  
14 discussion? Question? No questions, no discussion,  
15 that motion is passed. Thank you. Thank you,  
16 Richard. Now, move to Enforcement Actions, Number  
17 Seven is **Westside Bay Condo**. Kevin Mohammadi?  
18 MR. MOHAMMADI: Thank you, Mr. Chairman and members  
19 of the Commission. Westside Bay Condominiums are  
20 located on the Lake of the Ozarks in Camden County  
21 and are owned by Westside Bay Development,  
22 Incorporated. Currently, Westside has three  
23 buildings with approximately sixty occupied units.  
24 In October of 2004, the Department initiated  
25 negotiation for an out-of-court settlement with

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1 Westside to resolve past violation of the Missouri  
2 Clean Water Law. The parties reached a tentative  
3 agreement and the Department sent a draft sending to  
4 Westside on July 25th, 2005. That reflected the  
5 tentative agreement. To date - to date, Westside  
6 has failed to submit a signed agreement or an  
7 alternative agreement and has become - and has

8     become unresponsive while the development continues  
9     to be in non-compliance. The Staff recommends the  
10    matter to be referred to the Office of Attorney  
11    General Office for appropriate action.  
12    CHAIRMAN HERRMANN: Is there a representative from  
13    the West Bay Condominium Development present? See  
14    any? Any questions of Mr. Mohammadi?  
15    COMMISSIONER PERRY: What - what was the cause of  
16    the big lag - there was a tentative agreement  
17    reached in February and then it was actually sent to  
18    him in July?  
19    MR. MOHAMMADI: What was the cause of the lateness  
20    between February and July?  
21    COMMISSIONER PERRY: Yeah.  
22    MR. MOHAMMADI: Basically, we were working on  
23    language of the settlement - settlement agreement  
24    and also he was working on figuring out whether he  
25    wants to come into a (inaudible) or to build his own

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1     treatment plant. It was some logistic whether he could get an  
2     easement from the  
2     property that was between him and the area-wide  
3     sewer that he was trying to figure out and they were  
4     asking lots of money for giving from the easement  
5     and that was the reason that we delayed.  
6     COMMISSIONER PERRY: And then since that time,



7 that's all been worked out and then since July,  
8 nobody's heard from them?

9 MR. MOHAMMADI: No, we have made several attempts.  
10 Actually, we have - Staff have called him nineteen  
11 times and we have to ask him, "Where is the  
12 settlement agreement?" Or if he has any alternative  
13 - alternate language for the settlement agreement  
14 and he hasn't returned the calls.

15 COMMISSIONER EASLEY: Was that the only attempt  
16 you've made or have you made an attempt in writing?

17 MR. MOHAMMADI: An attempt in person, you mean?  
18 That's the only attempt we have made by  
19 correspondence, sending him letters, certified  
20 letter, calling him up on his cell phone number,  
21 leaving messages.

22 COMMISSIONER EASLEY: But you have sent the  
23 certified mail?

24 MR. MOHAMMADI: Yes.

25 COMMISSIONER PERRY: And he knows about today?

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1 MR. MOHAMMADI: Yes, he does. We also sent him a  
2 letter notifying him today that he's going to be  
3 referred.

4 COMMISSIONER PERRY: I move that the Commission  
5 refer the matter of Westside Bay Condominiums to the

6 Attorney General's Office.

7 COMMISSIONER Easley: Second.

8 CHAIRMAN HERRMANN: Moved and seconded. Any

9 discussion? Questions? Westside Bay Condominiums

10 will be referred. **Simpson Zeysing Farm.**

11 MR. MOHAMMADI: Mr. Chairman, since we put the

12 material in the packet on this particular issue, we

13 have reached tentative agreement so, therefore,

14 Staff are recommending to withdraw this referral for

15 timely efforts for this Commission meeting.

16 CHAIRMAN HERRMANN: Okay, we don't have to have any

17 action, do we?

18 COMMISSIONER PERRY: If you're withdrawing it, it's

19 just like it's (inaudible).

20 CHAIRMAN HERRMANN: Okay, **Lynchburg Lagoon.**

21 MR. MOHAMMADI: Okay, Mr. Louis owns and operates a

22 single cell waste water treatment lagoon that has

23 served his store, two other businesses, a firehouse,

24 and six full-time residents without a Missouri-state

25 operating permit. On October, 2003, the Department

1 issued an abatement order that's required Mr. Louis

2 to submit to the Department by January 1st, 2004, an

3 engineering report recommending corrective action.

4 The Department has sent correspondence to Mr. Louis

5 informing him that he has violated that abatement

6 order and during an inspection conducted July, 2005,  
7 Staff discovered that an additional business -  
8 businesses have been connected since the abatement  
9 order has been issued. Due to Mr. Louis' failure to  
10 comply with that abatement order, the Department  
11 recommends this matter to be referred to the Office  
12 of Attorney General Office.

13 CHAIRMAN HERRMANN: Recommendation or a motion  
14 relative to the Lynchburg Lagoon? Or, first of all,  
15 is anyone here in present representing Lynchburg?  
16 Apparently not. Do we have a motion relative to  
17 referral?

18 COMMISSIONER EASLEY: I have a question. You have  
19 six full-time residents here and I believe on the -  
20 the one we looked at before there was, maybe, as  
21 many as sixty. Are those residents also notified of  
22 this --

23 MR. MOHAMMADI: No, residents are not notified.  
24 Only the owner and responsible party who has built  
25 and operated the treatment facility.

40

1 COMMISSIONER EASLEY: So, they're unaware that  
2 there's some problems and they're unaware that these  
3 referrals could be - could that be one way of  
4 possibly putting some pressure back on the owner

5     there.

6     MR. MOHAMMADI:  No, we have not notified them and

7     the reason - that would be an additional steps,

8     Commissioner Easley, that Staff have to do in

9     gathering the information individually who lives on

10    each properties.  Obviously, if there is four, five,

11    six, like in this particular situation, that

12    wouldn't be too bad, but when you're talking about

13    sixty, seventy --

14    CHAIRMAN HERRMANN:  Well, the responsibility is with

15    the operator --

16    MR. MOHAMMADI:  That's correct.

17    CHAIRMAN HERRMANN:  giving the authority for the

18    treatment facility and not with the individuals who

19    - that would be tantamount to or the same as

20    everyone coming around to me since I discharge to

21    MSD sewers going, "We're going to take some legal

22    action at MSD.  You want to help out?"  I wouldn't

23    want to incur the wrath of MSD.  Susan gets mean.

24    Okay, any - any further questions?  Do we have a

25    motion relative to referral of Lynchburg?

41

1     COMMISSIONER EASLEY:  I move that the Commission

2     refer the matter of the Lynchburg Lagoon to the

3     Office of the Attorney General.

4     COMMISSIONER KELLY:  Second the motion.

5 CHAIRMAN HERRMANN: Moved and seconded. Any  
6 questions? Discussion? That motion is passed.  
7 MR. MOHAMMADI: Thank you.  
8 CHAIRMAN HERRMANN: We are at a point before we go  
9 into the staff updates that we should have a  
10 luncheon break. All of you people get lunch and the  
11 Commission as well. Before we do, you have a --  
12 COMMISSIONER PERRY: I have a motion.  
13 CHAIRMAN HERRMANN: Okay.  
14 COMMISSIONER PERRY: I move that the Clean Water  
15 Commission go into closed session to discuss legal,  
16 confidential, or privileged matters under Section  
17 610.021, Subsection 13, 14, involving personnel  
18 actions, personnel records or applications, records  
19 and otherwise protected matters, which are protected  
20 from disclosure by law.  
21 CHAIRMAN HERRMANN: Second?  
22 COMMISSIONER EASLEY: Second.  
23 CHAIRMAN HERRMANN: Moved and seconded. Please call  
24 for the vote, Marlene.  
25 MS. KIRCHNER: Commissioner Perry?

42

1 COMMISSIONER PERRY: Yes.  
2 MS. KIRCHNER: Commissioner Hardecke?  
3 COMMISSIONER HARDECKE: Yes.

4 MS. KIRCHNER: Commissioner Easley?  
5 COMMISSIONER EASLEY: Yes.  
6 MS. KIRCHNER: Commissioner Kelly?  
7 COMMISSIONER KELLY: Yes.  
8 MS. KIRCHNER: Commissioner Minton?  
9 COMMISSIONER MINTON: Yes.  
10 MS. KIRCHNER: Chairman Herrmann?  
11 CHAIRMAN HERRMANN: Yes. Shouldn't take more than  
12 an hour to get all of you to get fed and us to  
13 conclude our session.  
14 COMMISSIONER PERRY: I thought you were going to ask  
15 for any objection.  
16 CHAIRMAN HERRMANN: Huh?  
17 COMMISSIONER PERRY: That would have saved us three  
18 seventy-five per page. Davis, I really appreciate  
19 you voting again. It tells us that you're still  
20 breathing.  
21 (CLOSED SESSION)  
22 CHAIRMAN HERRMANN: We need a motion to come out of  
23 closed session and go back into open session.  
24 COMMISSIONER HARDECKE: I'll make that motion.  
25 COMMISSIONER PERRY: Well, I don't know if I want to

1 yet.  
2 CHAIRMAN HERRMANN: Oh, okay. Get huffy.  
3 COMMISSIONER PERRY: I move that this Commission

4     come out of closed session and continue this.

5     COMMISSIONER HARDECKE:   Second.

6     CHAIRMAN HERRMANN:   Okay.  Any objection?  Okay, we

7     are now in open session and proceed with the - with

8     the agenda.  Okay, we're going to get a staff **SRF Update**

9     from Doug Garrett.

10    MR. GARRETT:  On Page Two Fifty-one of your packet

11    is a brief summary on our upcoming fall closing,

12    which is scheduled for the end of November.  We have

13    nine entities that they are expecting close on for

14    approximately \$56.6 million dollars.  The pricing is

15    scheduled for next week.  At which time, the

16    interest rate will be set.  It was fortunate that

17    you went into closed session when you did.  It gave

18    me an opportunity to check e-mail and we have

19    received ratings from both Fitch and Standard

20    (inaudible) and, again, we will - our ratings will

21    be Triple A level for this closing.  And our

22    anticipation is that the interest rate for this

23    closing will be in the neighborhood of 1.4 percent

24    to the participants.

25    COMMISSIONER EASLEY:  1.4?

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1     MR. GARRETT:  1.4.  And, of course, that will be

2     refined at pricing itself.  The participants that

3 are expected to be in this closing are listed on  
4 Page Two Fifty-two and the probably loan amounts are  
5 the amounts that we are going forward with at this  
6 time. And some of those, you will note, I'd like to  
7 draw your attention to the City of Liberty. You'll  
8 note that the IUP amount was \$6,070,000; however, at  
9 the - at previous Commission meeting, we did grant  
10 them an increase to use their full bonding  
11 authority. And in standing with past Commission  
12 policy where we do just the loan amounts where the  
13 adjustment is less than ten percent as long as we,  
14 you know, sufficient funds are available, we go  
15 ahead and make those adjustments. That way, we can  
16 keep the projects going forward towards pricing. In  
17 our next Commission meeting, I'll give you a more  
18 detailed summary of - of what transpired actually at  
19 the closing. What the final interest rates would  
20 be.

21 CHAIRMAN HERRMANN: Okay, any questions?

22 COMMISSIONER HARDECKE: These are off of this list?

23 MR. GARRETT: Yes, sir. Yes, sir. And that the  
24 list that you were shown back in Tab Three - which  
25 page was that? There on Page Two Twenty-three,

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1 those dollar amounts for these participants was  
2 reflected in that chart.



3 COMMISSIONER EASLEY: How many years are these  
4 normally advertised?  
5 MR. GARRETT: Twenty years.  
6 COMMISSIONER EASLEY: Twenty years?  
7 CHAIRMAN HERRMANN: Okay, we go to Tab Eleven, Water  
8 Quality Review Sheet.  
9 MR. GARRETT: Chairman Herrmann?  
10 CHAIRMAN HERRMANN: Yes, sorry.  
11 COMMISSIONER EASLEY: We were just - is that locked  
12 in for the twenty years? That rate?  
13 MR. GARRETT: Yes.  
14 COMMISSIONER EASLEY: It's not a variable rate?  
15 MR. GARRETT: No.  
16 COMMISSIONER EASLEY: Okay.  
17 CHAIRMAN HERRMANN: Sorry. Thank you. Tab Eleven  
18 is the **Water Quality Review Sheet Update**, Peter  
19 Goode.  
20 MR. GOODE: I have an updated table that I will pass  
21 out now. This table is updated and replaces the  
22 table in - in Tab Eleven of your - of your briefing  
23 document. And just to go back, Water Quality Review  
24 Sheets are the process that we go through to  
25 establish water quality based affluent limitations.

1 We do these for new facilities, upgrades and

2 expansions, renewals of - of permits and they're  
3 critical because, you know, for example, for a new  
4 facility, the design engineer needs to know what -  
5 what the limits are to design - design the facility  
6 to and that relates to how long it takes to  
7 construct, how much it will cost, things of that  
8 nature. So, this is - this is one of the areas that  
9 we identified as a bottle-neck in the permit process  
10 and I believe it was at the May Commission meeting I  
11 gave a report to the Commission on - on the status  
12 of where we were and threw out some - some things  
13 that we were doing to improve the process. One of  
14 the things we did was train some of our regional  
15 office staff to do - to do water quality review  
16 sheets. Another thing was to train some of the  
17 central office staff to do - to do water quality  
18 review sheets as well, too. We also allow  
19 applicants to submit their own studies.  
20 Essentially, calculate the limits on their own and  
21 we just review the work that they do, which is - is  
22 much quicker than generating the work ourselves. We  
23 had had one person dedicated to this job in Missouri  
24 and that's - that's what kind of caused the backlog.  
25 We didn't have the resources to - to address the

1 issue. So, if you look at the back - back of that

2 table, there's some - some kind of summary numbers  
3 there. Back in the May meeting, I reported what the  
4 status was on April 18th. We had ninety-nine  
5 pending requests for - for water quality review  
6 sheets or - or for affluent limits. Of those,  
7 eighty-six of those were older than two months old.  
8 So, we had - we had a big backlog and they've been  
9 sitting there awhile. With - with some of the  
10 additional resources that we - we redirected to this  
11 effort and some of the - the efficiencies that we  
12 added or that we accomplished over the past six  
13 months or so, we've reduced the number of pending  
14 requests to forty and the number that are older than  
15 two months down to twenty-three. Now, we obviously  
16 got some - some more requests in during that interim  
17 and the total number of review sheets that we've  
18 done since April 18th is - has been a hundred  
19 fifty-three. So, we've - we've accomplished a great  
20 deal. We've brought the backlog down. We had a goal  
21 of October 1st as the date to get - to get the  
22 backlog worked down and we're kind of saying that  
23 the two-month limit is the backlog. So, we didn't  
24 quite hit that, but we - I think we made tremendous  
25 progress and we're moving a lot more efficiently.

1    So, this is - this is something that we will  
2    continue to improve upon in the future.  We're still  
3    working on training more staff in the regions to do  
4    this and we're also - we're also working on some  
5    default affluent limits that - that folks can use to  
6    design to without - without going through the entire  
7    water quality review sheet process.  So, with some  
8    more of those additional improvements, we expect  
9    that we'll - we'll bring those numbers down even  
10   more.  Again, our expectation is is that when we get  
11   in a request, you know, assuming that it's a normal  
12   request, that there aren't TMDL issues associated  
13   with it or things of that nature, we hope to be able  
14   to turn these around in about two months.  Be happy  
15   to answer any questions that the Commissioners may  
16   have.

17   COMMISSIONER HARDECKE:  What are the numbers in this  
18   column represent?

19   MR. GOODE:  That's the design flow.  That's the size  
20   of the facility in millions of gallons per day.

21   MR. GALBRAITH:  I think that - back in that May  
22   meeting, we - we or I said that we were going to  
23   work this backlog down by the fall of 2005 and here  
24   we are in the fall of 2005 and, I guess, you can -  
25   you can see  that the backlog is not worked down

1 entirely; however, we have cut the backlog by - by  
2 seventy percent and I'd rather make an ambitious  
3 goal and strive for it and miss it than - than not  
4 make any progress at all and I think I really want  
5 to commend Peter and his staff. John Hoke, in  
6 particular, for really making the extra effort to  
7 focus on this, because I think this is a big part of  
8 - of what - of what I was hearing about one of the  
9 things in the program that wasn't working as well as  
10 it could have, so, thank you, Peter.

11 MR. GOODE: Any other questions?

12 COMMISSIONER PERRY: I'd like to reiterate. I think  
13 that's great. Here we go, we start counting and it  
14 makes a difference. That's a good thing. I'm just  
15 curious - what's going on with Pulaski County?

16 MR. GOODE: Honestly, I - I - I can't tell you, I  
17 don't know, but I can find out for the next meeting.  
18 Be happy to find out what's going on.

19 COMMISSIONER PERRY: That's been almost four years?

20 MR. GOODE: Yeah, we did have - we did have a number  
21 of those and this is kind of the last leftover and  
22 I'll - I'll investigate why this one has been on  
23 there, but the - there were a lot of these that were  
24 - requests that were sent in in 2002 and 2003 that  
25 we did get off the list, so -

1 COMMISSIONER PERRY: I can see that. That's why  
2 that one stands out.

3 MR. GOODE: Yeah, yeah, I'll find out.

4 COMMISSIONER PERRY: Pretty close to being pretty  
4 current here. (Inaudible)

6 MR. GOODE: Okay.

7 CHAIRMAN HERRMANN: Thank you, Peter.

8 MR. GOODE: Thank you.

9 MR. GALBRAITH: Mr. Chairman, I'll combine my **budget**  
**10 and legislative update and - and Director's update.**

11 I don't have a lot of things, but just a few.

12 Budget and legislative-wise, we have submitted a -  
13 some expansion and some legislative concepts to the  
14 Governor's Office as a Department. We have not  
15 heard back from the Governor's Office yet on most of  
16 those, so I - I - I think I'll just have to defer  
17 much of this discussion until January. However, it  
18 is - I think as Doyle mentioned, the water permit  
19 fees will expire in - in fall of 2007, which leaves  
20 us two legislative sessions to - to get a renewal.

21 We've had three meetings - or we've had two - two  
22 meetings with permit fee stakeholders on August 24th  
23 and October 20th. At the October 20 meeting, the  
24 Department presented a gap analysis regarding  
25 monitoring and permitting and other program-need

1 areas to a group of about thirty stakeholders.  
2 There was a lot of discussion. Many questions,  
3 comments. We have a meeting scheduled for November  
4 17th to answer some of those questions and provide  
5 info and responses, especially in the areas of the  
6 Department's monitoring efforts and permitting  
7 efforts. I hope to come out of that meeting with  
8 some sense of - of where the stakeholders' support  
9 lies for renewing the fees and possibly, even,  
10 increasing the fees. I think Doyle mentioned  
11 earlier that we calculate twenty-five percent\*  
12 increase being what we would need just to maintain  
13 the status quo into the next seven years. So,  
14 that's really the extent of the budget and  
15 legislative issues.

16 COMMISSIONER PERRY: Are the fee bills always seven  
17 years out?

18 MR. GALBRAITH: They're - they're - well, they're on  
19 five-year cycles and we're starting two years early.

20 I will mention on a budget related issue in the -  
21 in the category of Don't Panic Yet, But - there was  
22 - there was an October 28th letter from Federal OMB  
23 Director Josh Bolton about cuts in the Federal  
24 budget in response to Hurricane Katrina and the one  
25 line item of interest to us here today has to do

\*This is an incorrect amount. Forty-Five percent is the correct amount.

1 with unobligated balances in the Clean Water SRF of  
2 \$166 million. The proposal would rescind \$166  
3 million, thereby reducing the amount generally  
4 available to the EPA and the - the rescission would  
5 come entirely from unobligated balances in the Clean  
6 Water State Revolving Fund. The - the White House  
7 has referred the recommendation to the House and the  
8 Senate for their consideration; however, no floor  
9 debates or committee meetings have been scheduled as  
10 of today that I know of. I don't know what the  
11 impact of this would be to Missouri or to our spring  
12 closing. It should not affect our fall closing and  
13 - but I just thought that you and the members of our  
14 audience would be interested to know about that  
15 development. On - regarding Director's report,  
16 Doyle covered a number of issues including the Moark  
17 permit. I will just let you know that the next  
18 Clean Water Forum will be in December. I hope to  
19 have that scheduled and the invites sent out this  
20 week. In fact, we will do that. A number of things  
21 on the agenda including the upcoming regulatory  
22 agenda and some updates on some standing issues with  
23 regard to drinking water and - and waste water  
24 permitting and monitoring, so look for - for an  
25 invite to that in an e-mail box near you some time



1 soon. I told you about Sullivan. The - oh, the  
2 Water Quality Rule, remember that? Well, is - is  
3 scheduled to be published November 15th and  
4 effective December 31st and the Department plans to  
5 submit that to EPA some time in the first week of  
6 January. Per the Commission's directive -  
7 direction, the program put on public notice four  
8 water bodies that were designated not whole body  
9 contact. Mississippi River, Maline Creek, River Des  
10 Pere and Coon Creek and we will report on the - on  
11 the responses received at that public notice at our  
12 January meeting. We provided - Becky Shannon put  
13 together in response to a question that came up last  
14 week. Some information on the status of several 319  
15 grants and I think you had that on the table this  
16 morning. I'll have to defer any questions on that  
17 to - to Becky. The last thing I want - want to quiz  
18 you on is the format of the minutes. We switched in  
19 the last two meetings to a transcript-style. We  
20 feel - well, two things. It - it - it's a  
21 transcript, and so it reflects the record more  
22 accurately. That's one thing on the plus side. The  
23 second thing on the plus side is it saves Marlene  
24 quite a bit of time encapsulating the minutes from  
25 the tapes and her notes as she had to do in the past

1 and it was a significant, you know, almost a week  
2 long task in some cases. So, I, obviously, for  
3 selfish reasons, prefer it from that point of view.  
4 Obviously, it makes for a longer packet and more to  
5 read on your part, so I - I guess I want to know  
6 from the Commission, is that - is that a good thing?

7 A bad thing? Is it an acceptable thing to do the  
8 minutes in that fashion?

9 COMMISSIONER PERRY: They always - they also provide  
10 a condensed form where they put four - four pages on  
11 one page. And that might be a good thing.

12 CHAIRMAN HERRMANN: The reduced?

13 COMMISSIONER PERRY: I'm just saying that would save  
14 some -

15 MR. GALBRAITH: Oh, they can make - make it put more  
16 on fewer pages.

17 CHAIRMAN HERRMANN: Smaller print.

18 COMMISSIONER PERRY: But they do that pretty  
19 standard because most people prefer the condensed  
20 version.

21 MR. GALBRAITH: Okay, yeah, we can look into that.  
22 Any other comments or observations?

23 CHAIRMAN HERRMANN: No, I - I think it's very good  
24 in saving money and very good in - in capturing  
25 everything that's discussed and said during the

1 meeting, rather than having Marlene transcribe what  
2 she thinks we said from the - what she hears on  
3 tape. This way is what we said so we all got to be  
4 a little more careful about what we say, maybe.  
5 Some of us.

6 COMMISSIONER PERRY: Well, it's my understanding  
7 that Marlene goes back and checks.

8 CHAIRMAN HERRMANN: Yeah.

9 COMMISSIONER PERRY: And I think that's a very good  
10 thing because you would hear and I'm going to learn  
11 how to talk in whole sentences.

12 MR. GALBRAITH: Makes you consider all your um's and  
13 oh's. That is the extent of my updates. Can I  
14 answer any questions for the Commission? Okay,  
15 thank you.

16 COMMISSIONER PERRY: Oh, I'm sorry, I forgot my  
17 question and I was trying real hard to remember it.  
18 Trying very hard to remember it. When is the next  
19 TMDL list coming down the pike?

20 MR. GALBRAITH: I'm going to look to Phil Schroeder  
21 to answer that question.

22 COMMISSIONER PERRY: I can tell he's really looking  
23 forward to it.

24 MR. SCHROEDER: Anybody got a coin or a dice that we  
25 can roll?

1 MR. GALBRAITH: Let me clarify. Do you mean the -  
2 the next impaired waters list?

3 COMMISSIONER PERRY: Yes.

4 MR. SCHROEDER: That's what I heard. Well, we are  
5 working on that. We have produced a - a draft list  
6 and shared it with a group of stakeholders and among  
7 the stakeholders, of course, EPA with that. Now,  
8 we've been advised by EPA that the list that we've  
9 put together, in accordance with the Commission's  
10 methodology, which was developed to help us with  
11 developing a 2004 list, basically won't do for our  
12 2006 list. You may also know that what we were  
13 attempting to do or wanting to do is combine our  
14 2004 effort with our 2006. So, we're - with that  
15 information from EPA and what they're stating is  
16 that they had recently published - seeking some  
17 guidance. It was back in July of 2005. This year.  
18 And in that guidance, they feel that there's some -  
19 some directions there that would lead them to  
20 believe that the way we've put our list together  
21 needs to be changed. So what we're looking at is  
22 options. Okay, what are we going to do? We're  
23 really in the process of defining what those options  
24 are and then trying to select which one's the best

25 one. And some of the options that we're looking at

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1 is whether we should just go ahead and forge forward  
2 and let EPA review the 2004-2006 list that we  
3 devised with our stakeholders in accordance with the  
4 Commission's methodology and let them decide on  
5 whether or not there's additional waters that they  
6 want to place based on their own review under their  
7 - their guidance. Another option may be that we  
8 want to split these efforts apart. Just go ahead  
9 and forge forward with the 2004 list in accordance  
10 with the Commission's methodology and put off trying  
11 to label the next 2006 list until we've had  
12 discussions with EPA on the specific concerns that  
13 they have with the methodology. Perhaps address  
14 those with the Commission before we continue on with  
15 that subsequent effort.

16 MR. GALBRAITH: I - I would predict that we'll have  
17 a - have a lengthy discussion on this at our January  
18 meeting. Phil and I were discussing that this week  
19 and we have several options that we want to discuss  
20 with EPA and others and I - I predict that we will  
21 present those options in January.

22 COMMISSIONER PERRY: Okay, and I was just sort of  
23 thinking on the horizon what's the next beyond water  
24 quality standards and those things. What's the next

25 big thing and when is that coming?

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1 MR. GALBRAITH: We have probably - depending on how  
2 you count them - a dozen or more distinct regulatory  
3 considerations and my plan was to - to roll those  
4 out at the next Clean Water Forum in December and  
5 then present them to the Commission in January.

6 It's quite a healthy list as Phil sighs.

7 CHAIRMAN HERRMANN: Will you have a - digested or  
8 considered the - the new EPA rules - 2005 rules -  
9 which just very recently came - came to being.

10 MR. GALBRAITH: On the - on the guidance for the  
11 impaired waters?

12 CHAIRMAN HERRMANN: Yes.

13 MR. GALBRAITH: Yes, it - right, we're trying to  
14 consider how we - we're caught between the  
15 Commission's approved guidance and then we no - we  
16 no sooner got into developing a list based on that  
17 then EPA released their new guidance, so we're sort  
18 of caught between those - those two, you know, rock  
19 hard place. You're here, kind of thing.

20 CHAIRMAN HERRMANN: So, we really don't know where  
21 we are, much less where we're going.

22 MR. GALBRAITH: I hate to admit it, but that's a  
23 good assessment of the situation.

24 CHAIRMAN HERRMANN: Anything else, Ed? We have a  
25 request from **Robert Brundage (Public Comment and Correspondence)**

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1 to address the Commission. Where's Robert? There he is.

2 MR. BRUNDAGE: Commissioner Perry, you just usurped  
3 my agenda item here. I was going to address the  
4 Commission concerning the 2002-2006 303(d) list. I'm  
5 not sure if I heard you mention whether or not the  
6 Missouri Coalition for the Environment and the  
7 Sierra Club have submitted a letter to EPA asking  
8 them to take over the 303(d) listing process, because  
9 Missouri has not yet adopted the 2004 list and it's  
10 almost 2006. And I, too, had heard what Phil and Ed  
11 Galbraith had just talked about about EPA's concerns  
12 about Missouri's listing methodology and how that  
13 compares with EPA's new 2006 assessment guidance and  
14 I'd written a letter to Ed this last week asking  
15 that, you know, this issue needs to be addressed  
16 rather quickly. It seems to me we need to figure  
17 out which way we're going to go with this list here  
18 in Missouri and after the 303(d) stakeholder meeting -  
19 I don't know if it was a month ago, whenever it was.  
20 It - there still looks like Ed said we really don't  
21 know where we're at. So, I was going to bring this  
22 up, but you've already talked about it and I would  
23 urge the Department to move as quickly as possible

24 to figure out a proper course of action and, most  
25 importantly, I think it's imperative that EPA

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1 clearly specify what impact their listing guidance -  
2 their 2006 listing guidance has because that's what  
3 has kind of thrown a monkey wrench in this thing  
4 recently about whether or not you combine the two  
5 lists or you split them apart and to split them  
6 apart, even though there's more work, does that make  
7 it simpler in 2004 versus 2006? I don't know the  
8 answer to those questions and I'm not sure if the  
9 Department knows the answers to those questions yet  
10 and maybe that's due in part that EPA hasn't weighed  
11 in sufficiently.

12 COMMISSIONER PERRY: I have two questions on that.  
13 Once - one if I you - if I remember anything,  
14 Robert, you have a better memory than I. The reason  
15 we went ahead and worked on our guidance because  
16 there wasn't any from EPA. Is that correct?

17 MR. BRUNDAGE: There was some guidance that, I  
18 think, a lot of Missouri borrowed from EPA's  
19 guidance, but they --

20 COMMISSIONER PERRY: But the new one hadn't come out  
21 yet and we didn't even know when that would be.

22 MR. BRUNDAGE: That's correct, because they revise



23 it every so often.

24 MR. GALBRAITH: I guess my understanding is that

25 Missouri Statutes required us to promulgate a

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1 guidance as a rule before we used it to develop a  
2 list.

3 COMMISSIONER PERRY: I think I remember a lot of  
4 those procedural discussions and that - that leads  
5 to my second question. How significantly different  
6 is - is the EPA and us?

7 MR. GALBRAITH: That's what we're evaluating. I  
8 mean, we're evaluating that now. I don't know the  
9 answer.

10 COMMISSIONER HARDECKE: Can you get us a copy of  
11 that EPA or how big a volume is it?

12 MR. BRUNDAGE: I had contacted Leo Alderman and just  
13 left a voice mail requesting that EPA clarify  
14 whatever their concerns were, but I think we're just  
15 related orally to the Department of Natural  
16 Resources and nothing's in writing to my knowledge.  
17 So, with that, I - I would just urge the Department  
18 to move forward as quickly as possible to try to  
19 make a recommendation to the Department and too bad  
20 it will be January before that will happen. My next  
21 agenda item that I want to talk to you about is  
22 concentrated animal feeding operation rulemakings. As

23 you may recall, last February, the United States  
24 Court of Appeals for the Second Circuit, rendered a  
25 court decision based on court challenges to the

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1 Federal EPA CAFO Rule. There was challenges filed  
2 by both environmental groups and industry groups and  
3 both sides won part of their case. In response to  
4 that court decision, EPA basically had to go back to  
5 the drawing board and they have announced that they  
6 plan on releasing a proposed rule this fall to, once  
7 again, change part of the CAFO - the EPA CAFO  
8 regulations. Missouri has kind of put their effort  
9 on hold to modify and change Missouri's regulations  
10 because, just might as well wait and see what the  
11 EPA regulations were going to be changed to, so that  
12 some of those could be mirrored. On October 31st,  
13 EPA issued a Federal Register Notice talking about  
14 two deadlines that are in the Federal EPA  
15 regulations that were not impacted - or not directly  
16 impacted, but indirectly impacted by the court  
17 decision. One of them was the deadline by  
18 December 31st, 2006, concentrated animal feeding  
19 operations must submit a nutrient management plan  
20 for approval. Many farmers - (inaudible)farmers  
21 have been wondering is that going to be a hard and

22 fast deadline and EPA has announced that they intend  
23 to extend that deadline whenever they release their  
24 rule, so it's basically a - this wasn't a proposed  
25 rule, but it's a Federal Register Notice notifying

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1 people that when the proposed rule comes out, they  
2 plan on extending that deadline that Nutrient  
3 Management Plans be completed. But also extending  
4 the deadline, which I believe is a February, 2007,  
5 deadline for new CAFO's that came on after the EPA  
6 rule went into effect to have permits if they didn't  
7 have a permit before. That largely doesn't impact  
8 Missouri because virtually all CAFO's in Missouri  
9 have permits. The final thing I wanted to visit  
10 with you briefly about was the City of Moberly. I  
11 represent the City of Moberly. As you recall, last  
12 July, the Clean Water Commission voted to grant the  
13 City a variance concerning CSO issues and the City  
14 of Moberly's permit has been expired for about -  
15 well, for over three years now. It expired some  
16 time in 2002 and they had timely submitted their  
17 application for renewal and the City is very much  
18 looking forward to having their permit issued before  
19 December 31st of this year and we've been working  
20 with the Department Staff to see that that happens  
21 and, at this point in time, we have every reason to

22 believe that that will happen and the Department  
23 Staff here, if there's any other questions that we  
24 need to talk about later, come and see me. But we  
25 are working on that. Recently, the Department

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1 placed on Public Notice the UAA issue about whether  
2 or not the beneficial use of whole body contact  
3 should be assigned to Coon Creek. You had voted at  
4 your last meeting that it was not a proper use.  
5 That the use did not exist and therefore the rules  
6 did not apply. The Department has placed that on  
7 Public Notice and the public has until November 28th  
8 to comment on that. That concludes my remarks.

9 CHAIRMAN HERRMANN: Robert, you talk about the new  
10 Federal regulations. I had gotten wind of that,  
11 too, of requiring - on CAFO's requiring Nutrient  
12 Management Plan. It's always been my understanding  
13 of our permit rules that we require a Nutrient  
14 Management Plan for all CAFO's in the state. Is  
15 that not correct?

16 MR. BRUNDAGE: That - that's not - that's not  
17 correct, Mr. Chairman. Our rules basically talk  
18 about applying nitrogen or manure or affluent at a  
19 nitrogen rate. The EPA regulations - let me back  
20 up. We have in Missouri general permits and

21 site-specific permits. The site-specific permits  
22 are very, very detailed on setting forth an equation  
23 on how to apply manure. That equation is so  
24 detailed it, in effect, is a quasi-Nutrient  
25 Management Plan. It's already inside of a

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1 site-specific permit. The general permits are more  
2 vague. They have - you submit an application and  
3 there's a lot of the same components of a Nutrient  
4 Management Plan in your application, which are kind  
5 of incorporated by reference through a general  
6 permit. So, technically, we don't have in our  
7 Missouri regulations a requirement that says you  
8 shall have a Nutrient Management Plan, but that is  
9 what the EPA regulations are now requiring and the  
10 court decision says - and this is different how they  
11 overruled EPA's regulations - they said the Nutrient  
12 Management Plan must go on Public Notice together  
13 with the permit. Before, you just had the permit go  
14 on Public Notice and not the Nutrient Management  
15 Plan. Now, both have to go on Public Notice  
16 according to this court decision.

17 CHAIRMAN HERRMANN: Who has - who, among the CAFO's  
18 has the general permit?

19 MR. BRUNDAGE: Class 1B's and 1C's. This is a wild  
20 - rough guess. There's around four hundred general

21 permitted facilities in the state and there's  
22 approximately twenty-five or so site-specific  
23 permitted facilities in the state. Those are rough  
24 numbers.  
25 CHAIRMAN HERRMANN: The larger ones are all

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1 site-specific.  
2 MR. BRUNDAGE: Class 1A are site-specific in the  
3 state. More than you wanted to know, maybe.  
4 CHAIRMAN HERRMANN: No.  
5 MR. BRUNDAGE: Good.  
6 CHAIRMAN HERRMANN: That's what I wanted to know.  
7 MR. BRUNDAGE: Alright, great. Anything else?  
8 CHAIRMAN HERRMANN: But the Federal law says that the  
9 -  
10 END OF SIDE B, TAPE TWO  
11

1 BEGINNING OF SIDE A, TAPE THREE

2 CHAIRMAN HERRMANN: the Public Notice.

3 MR. BRUNDAGE: That was the court case - the court  
4 decision.

5 CHAIRMAN HERRMANN: Yeah, right.

6 MR. BRUNDAGE: Ruling. Some people thought that  
7 that would carry over to land disturbance permits  
8 that require storm water pollution prevention plans.

9 I think there was a recent case that said they  
10 didn't have to go on Public Notice, but, getting off  
11 topic a bit here.

12 CHAIRMAN HERRMANN: Thank you.

13 MR. BRUNDAGE: Thank you.

14 CHAIRMAN HERRMANN: Any other public comment or  
15 correspondence? Then move to **presentation on**

16 **Unclassified Waters of the State.** Craig Aubuchon,  
17 Washington University.

18 MR. AUBUCHON: If anybody else in the back would  
19 like to move forward to see some photos of Missouri  
20 streams, please feel free. Good afternoon. My name  
21 is Craig Aubuchon and I'm a Senior Undergraduate  
22 student at Washington University in St. Louis. I'm  
23 speaking here today on behalf of the Missouri  
24 Coalition for the Environment. I worked with the  
25 Coalition in this presentation during this last

1 summer while I was employed as an intern at the  
2 Washington University Interdisciplinary Law Clinic.  
3 The Coalition is a client of the Clinic. I'm not an  
4 attorney and I'm not speaking today as an attorney  
5 for the Coalition. I'm only here to present the  
6 facts I found. Thank you for allowing me to speak  
7 out - for allowing me to come before you and speak  
8 today. I will keep this presentation brief and to  
9 the point and if anyone would like a copy of the  
10 presentation, please ask me and I can provide it  
11 afterwards. My presentation today deals with  
12 unclassified waters. As you know, Missouri's  
13 specific water quality criteria apply to only  
14 classified waters. A large group of waters in the  
15 State of Missouri have not been classified and  
16 therefore offered no designated uses and are not  
17 protected by specific criteria. These unclassified  
18 waters are the subject of this presentation. Last  
19 summer, I conducted field surveys of unclassified  
20 waters in the St. Louis region. I wanted to see if  
21 they were significant water bodies where they have  
22 protection. As this presentation will show, I found  
23 very little difference between many of the  
24 significant - between many of the classified and  
25 unclassified streams. Of all the streams I visited,



1 either classified or unclassified, seemed to be  
2 significant water bodies, even in the middle of that  
3 drought that we experienced this summer. During the  
4 month of June, I visited and photographed  
5 unclassified sections of streams that appeared on  
6 Table H of Missouri regulations. I undertook this  
7 project to look at the classification boundaries of  
8 these streams and the relation to other political  
9 and geographical boundaries. I was also interested  
10 in the conditions of these unclassified streams as  
11 they related to the significance of the water body.  
12 When - when possible, I took photos that documented  
13 the ability of these unclassified reaches to support  
14 aquatic life and / or whole body contact recreation.

15 For logistical reasons, I chose streams that are  
16 within a one-hour drive of St. Louis. As I  
17 mentioned, I selected streams that were on Table H  
18 and thus I was able to identify them using the GIS  
19 website maintained by the University of  
20 Missouri-Columbia called CARES, which stands for the  
21 Center for Agricultural Resource and Environmental  
22 Systems. I used the distance tracking tool and the  
23 township range section data to find the unclassified  
24 portions of these streams. I then plotted the GPS  
25 coordinates of this boundary under seven and a half

1 minute topographical map using TOPO software.

2 Finally, I selected locations that were easy to

3 access either through public lands or road

4 crossings. I visited St. Louis County and St. Louis

5 County streams on June 14th. The weather was

6 seventy-five degrees Fahrenheit and was sunny. On

7 the following day, June 15th, I visited St. Charles

8 County. The weather was slightly warmer and still

9 sunny. Finally, two weeks later I made it out to

10 St. - Franklin County. This was our first week when

11 we had that really hot and oppressive weather and it

12 was ninety-five degrees and cloudy. In total

13 through the summer, I visited twenty streams and

14 today, I will show you photos from three of those

15 streams - one from each county. Before we see these

16 photos, I think it's important to note that on July

17 13th, the Missouri Department of Natural Resources

18 released this drought notice. All the following

19 photos were taken in counties that experienced a

20 Phase Two drought. You can see the orange counties

21 - which is declared to be when plants begin to show

22 stress, stream levels drop, and rainfall is below

23 normal for many months. Pond levels begin to

24 noticeably fall. As the next map further

25 demonstrates, participation levels for the period

1 from May through July of 2005, were also  
2 below-average for the St. Louis region. However, I  
3 would like it to be noted that it had recently  
4 rained the week before when I visited several of  
5 these streams on June 14th and 15th. Throughout my  
6 presentation, you will see reference in the photos  
7 to upstream and downstream. I use these terms in  
8 the conventional manner, such that downstream refers  
9 to a picture looking towards the mouth of the water  
10 body and upstream refers to the headwater. I have  
11 reported site locations based on GPS data and the  
12 more identifiable road crossings that they can be  
13 found. The first place I visited was St. Louis City  
14 and County and was a great introduction to this  
15 project because I did not expect to find as many  
16 significant waters as I did. Creve Coeur Creek  
17 immediately attracted my attention because I've  
18 ridden my bike out to the lake several times and I  
19 have friends who also row on the lake. It had never  
20 occurred to me, however, to go look at the creek  
21 near the lake. The first site location was at - at  
22 road AB, which is near Highway 141. This  
23 unclassified section runs through a nice  
24 neighborhood and alongside the highway. You can see  
25 from the pictures that the stream is about eight

1 feet wide and one to one and a half feet deep.  
2 There's a significant flow and the water here is  
3 fairly clear.  
4 CHAIRMAN HERRMANN: Is that anywhere near where the  
5 new road or what's crossing 141?  
6 MR. AUBUCHON: Yeah, 141 and AB, which is not Ladue  
7 Road, but it's very near that area.  
8 CHAIRMAN HERRMANN: (Inaudible).  
9 MR. AUBUCHON: I have pictures when we cross Owl  
10 Street and go to Creve Coeur Mill Road later in the  
11 presentation.  
12 CHAIRMAN HERRMANN: (Inaudible).  
13 MR. AUBUCHON: Yes, sir.  
14 CHAIRMAN HERRMANN: (Inaudible).  
15 MR. AUBUCHON: The second place I visited on the  
16 stream was a little further north at a church about  
17 a quarter-mile up the road. The stream here begins  
18 to narrow and get deeper and also begins to become  
19 much more turbulent. Finally, as you go further  
20 downstream and cross Olive Road, otherwise known as  
21 Highway 340, the stream becomes classified. The  
22 following pictures were all taken at Creve Coeur  
23 Mill Road and show a great contrast between the  
24 earlier photos. You can see the classified section  
25 of this stream shows much more human involvement

1 with the concrete banks and also a water pipe  
2 running across the stream here. From my  
3 observations, it seems if the unclassified section  
4 was a more natural stream. After touring St. Louis  
5 County, I headed to St. Charles on the very next  
6 day. St. Charles was interesting to me because it  
7 had both rural and urban streams. My favorite was  
8 Fem Osage Creek because I thought it was the most  
9 impressive water body that I visited especially in  
10 contrast to a lot of the more urban streams in St.  
11 Charles County. The first location I visited on Fem  
12 Osage was on Fem Osage Creek Road and it showed  
13 evidence of a lot of human use, mainly in the form  
14 of four-wheeled drive vehicles. We even saw a large  
15 pit with tire tracks where it appeared that a  
16 vehicle had become stuck. The stream in this  
17 section was clear and fast flowing. It was shallow  
18 downstream, but as you can see, upstream it had some  
19 larger pools, mainly at the base of that large tree.  
20 Further to the east, the stream becomes much larger  
21 and in my mind, resembles some of the waters from  
22 the Ozark region. I was unable to hike down to the  
23 confluence of Fem Ozark and the Shoalsburg Creek,  
24 but it's clear to see that the stream is steadily  
25 increasing in size on its way to the Missouri River.

1     The last place I visited on Fem Osage Creek was the  
2     furthest away from its classification boundary.  
3     This was on Deep Forest Road and the creek here is  
4     surrounded by private property, so I stayed on the  
5     road to take the pictures. I think these pictures  
6     demonstrate the clarity and depth of the pool at  
7     this - at this road crossing. We saw fish about  
8     palm size swimming in the deep pools around this  
9     bridge. Lastly as I mentioned, on June 30th I  
10    headed out to Franklin County. There's the least  
11    amount of water here owing to the drought, and yet  
12    it was here that I found the most visible and active  
13    aquatic life. I wanted to include Fiddle Creek in  
14    the presentation because it contained the deepest  
15    pool of any stream I saw, yet it also dried up  
16    entirely in some sections holding only intermittent  
17    stages of water. It was in these pools that I found  
18    the majority of aquatic life, which seemed to be  
19    waiting out the drought for better times. The first  
20    place we stopped was at the Highway T intersection.  
21    Fiddle Creek becomes classified directly north of  
22    here where the creek crosses the railroad tracks.  
23    The creek here is really chalky and dirty downstream  
24    because of nearby road construction, but upstream  
25    you can see the water channel widen and the water

1   deepen. Fiddle Creek Road follows the creek south  
2   and intersects it a number of times. This is more  
3   of a rural residential area. This pool here is  
4   located across the street from a nearby residence.  
5   Below the bridge, I saw several fish, some up to  
6   four inches in length. And finally, further south  
7   and closer to the headwaters of the creek, the  
8   stream becomes intermittent. What interested me  
9   here were the number of frogs and other aquatic  
10   species seen in these streams and small pools. All  
11   told, I visited twenty streams this summer. And  
12   while there are a number of similarities, no two  
13   streams were alike. I know that many of the streams  
14   are located in the middle of communities. There are  
15   playgrounds along many of the streams that I  
16   surveyed and a lot of times, there was evidence of -  
17   of human use in and around the waters. What's  
18   surprised me the most were the classification  
19   boundaries on some of the streams such as Gravois  
20   Creek, which becomes unclassified once it heads into  
21   Grant's Farm and into the deer park they have  
22   located there. Or Wild Horse Creek, which becomes  
23   unclassified once it heads into Babbler State Park.  
24   There are several other creeks which became  
25   unclassified once they crossed a given road or under

1 a bridge, which didn't seem to have any apparent  
2 biological reason for the water stream. Whether the  
3 stream was classified or not in a given section, it  
4 did seem somewhat arbitrary. The unclassified  
5 sections, as I documented through photos, were much  
6 like the classified section in terms of aquatic life  
7 and evidence of human use. Whether they were  
8 classified or not, most of the streams I saw were  
9 fairly significant water bodies that supported  
10 aquatic life - even in the middle of the summer  
11 drought. Thank you for - very much for your time.  
12 If you have any questions, I'd be happy to answer  
13 them at this time. Yes, ma'am?

14 COMMISSIONER PERRY: Is your - you said something at  
15 the beginning that these creek - these unclassified  
16 water bodies are not protected by specific criteria  
17 and are you implying, therefore, that they're  
18 unprotected?

19 MR. AUBUCHON: No --

20 MR. HEISEL: Matt, yeah, the point is that,  
21 I mean, the unclassified waters is protected by the  
22 narrative criteria. They don't have - there are no  
23 designated uses applied to unclassified waters in  
24 those specific criteria, so instead of having a  
25 numerical limit to go out and monitor against,



1   there's just simply a free from - it shall be free  
2   from scum to a certain extent, etcetera  
3   m, etcetera.

3   And the point - I mean, it's very hard to enforce or  
4   judge compliance against narrative criteria as  
5   opposed to specific criteria.

6   CHAIRMAN HERRMANN: Can I ask a specific question  
7   then? In all three of the creeks which you referred  
8   to, Gravois Creek, Wild Horse Creek, Creve Coeur  
9   Creek and even Fem Osage, there is no point source  
10   discharge to any of those - any of those water  
11   bodies, so what specific are you - criteria should  
12   we be looking for?

13   MR. HEISEL: Well, I mean if --

14   CHAIRMAN HERRMANN: By criteria, you're saying that  
15   it should support aquatic life. It should be  
16   capable of wildlife watering and other beneficial  
17   uses not so named, but those narrative criteria  
18   covering those uses.

19   MR. HEISEL: Right, which - which are hard  
20   to enforce. I mean, there's eighty-four thousand  
21   some odd miles of these unclassified streams in the  
22   state. You know --

23   CHAIRMAN HERRMANN: (Inaudible) storm water happens.  
24   It (inaudible).

25   MR. HEISEL: Well, but I mean, that's part

1 of what we're trying to figure out. I mean, these  
2 are not and how many of those eighty-four thousand  
3 miles are?

4 CHAIRMAN HERRMANN: (Inaudible) point source  
5 discharge, so if you say, "Okay, they are impaired."

6 What are you going to do to correct them? Take  
7 some of the cows that are on the water?

8 MR. HEISEL: Well, DNR's documents indicate  
9 that eighty-two percent of discharges are to - to  
10 unclassified streams. So --

11 CHAIRMAN HERRMANN: Eighty-two percent of discharges  
12 from what?

13 MR. HEISEL: I don't know. But, I mean --

14 CHAIRMAN HERRMANN: So what's the solution?

15 MR. HEISEL: Well, I mean, the solution what  
16 we're advocating for is to have - treat these  
17 streams the same way we treat classified water  
18 bodies.

19 CHAIRMAN HERRMANN: Well, what's your solution for  
20 attaining that creek?

21 MR. HEISEL: Well, if it's a point source  
22 and --

23 CHAIRMAN HERRMANN: We don't have any point sources  
24 on the creeks I mentioned.

25 MR. HEISEL: Well, on these maybe they're

1 not impaired, but how - how are we supposed to know  
2 if they're not a specific criteria?

3 CHAIRMAN HERRMANN: To be on the --

4 COMMISSIONER PERRY: Well, they have aquatic life,  
5 wouldn't you say? (Inaudible).

6 MR. HEISEL: I mean, judging from some of  
7 these, it looks like they're probably not impaired,  
8 which is a good thing, but that's not to say across  
9 that across the state there aren't some that  
10 wouldn't be impaired or that if we actually had  
11 specific criteria to measure against, then we  
12 wouldn't find some that are impaired. And that's -  
13 I mean, we're not saying that all of these streams  
14 should go on the 303(d) list, but as it is now, we  
15 don't know without making some rough guess using the  
16 narrative criteria whether or not they're attaining  
17 those uses.

18 CHAIRMAN HERRMANN: They are obviously supporting  
19 aquatic life (inaudible) and that's the biggest part  
20 of the narrative right there. If there are no  
21 frogs, no fish, there's no aquatic life, then it's  
22 impaired.

23 MR. HEISEL: Well, that - you know, can we  
24 say that categorically throughout the State of  
25 Missouri?

1 CHAIRMAN HERRMANN: Probably so.

2 MR. HEISEL: I don't know about that. I

3 mean, on what basis are you saying that?

4 CHAIRMAN HERRMANN: I'm saying on the basis that

5 you're saying that they're impaired because most of

6 these streams in rural areas are probably impaired

7 due to pasture land grown up, maybe due to wildlife,

8 other things of that nature that are impairing those

9 streams. There's no human use of that stream.

10 There's no discharge - no point source discharge,

11 there's no way discharge can get anything to it

12 other than the wildlife can.

13 MR. HEISEL: Well, you know, I think we can

14 debate this all day, but, I mean, if it's a

15 non-point source impairment, then I think we need to

16 know that. We should know that under the Clean

17 Water Act.

18 CHAIRMAN HERRMANN: (Inaudible).

19 MR. HEISEL: To clean it up somehow.

20 CHAIRMAN HERRMANN: Who's going to clean it up?

21 MR. HEISEL: Whether it's through --

22 COMMISSIONER HARDECKE: You mean to kill all the deer?

23 CHAIRMAN HERRMANN: That's what the 319 grants are for to address

24 non-point source pollution.

24 MR. HEISEL: And so why don't - why don't

25 you target 319 grants to streams that are impaired?

1 CHAIRMAN HERRMANN: That's Number One criteria.

2 MR. HEISEL: Well, our point is that it's

3 impossible to know exactly how many of these are

4 impaired without having specific criteria.

5 (Inaudible)

6 COMMISSIONER PERRY: I have one more question. Do

7 you think - that St. Louis water body - I happen to

8 know that we do (inaudible) weekend in St. Louis got

9 somewhere between two and three inches from remnants

10 of Hurricane Dennis. The reason I know that is I

11 was north of there (inaudible) that far home. Did

12 you go back two weeks later and were they quite as

13 full?

14 MR. AUBUCHON: (Inaudible)

15 COMMISSIONER PERRY: You're first two (inaudible).

16 There seems to be quite a bit of water there, but -

17 but as I said, I know that in that timeframe, there

18 was significant rainfall in St. Louis.

19 MR. AUBUCHON: Yes, ma'am. I did not make it back

20 to Creve Coeur Creek. Two weeks later, I headed out

21 to Franklin County (inaudible). I think the

22 precipitation amount that we showed --

23 COMMISSIONER PERRY: That was over a long period of

24 time. I'm saying that same weekend, St. Louis had

25 about two or three inches of rain at least.

1 MR. AUBUCHON: I don't - I don't remember if it was  
2 two or three.

3 COMMISSIONER HARDECKE: It was significant amount of  
4 rain.

5 MR. AUBUCHON: Yeah, I did mention that.

6 CHAIRMAN HERRMANN: You and I can drive out to Creve  
7 Coeur Creek, the improved section that you had,  
8 which is just north of Olive Creek Road past the  
9 nurseries there, and I will bet you today we wouldn't  
10 find an inch - inch and a half of water in those  
11 improved sections and I know you won't find anybody  
12 - any water up in the lagoon area.

13 COMMISSIONER HARDECKE: I think you've showed that  
14 there is aquatic life where there's water there.  
15 There's a lot of gravel problems there.

16 MR. AUBUCHON: I - I think the creek  
17 (inaudible) would also show that a low, low amount  
18 of precipitation of aquatic life will find the wet  
19 regions of the stream. And while Creve Coeur Creek  
20 may not have water through all of it, I think the  
21 fact that we documented aquatic life there during a  
22 period of high water means that they have to have a  
23 place to go even during these periods now where you  
24 say there is low water shown. I think we can - we  
25 can still find evidence of that aquatic life. Thank

1     you for your time.

2     CHAIRMAN HERRMANN: Thank you. Okay, we're down to

3     future meetings. Ed?

4     MR. GALBRAITH: Well -

5     CHAIRMAN HERRMANN: Our next meeting is scheduled

6     for January 4th, 2006.

7     MR. GALBRAITH: I think it was our desire to work

8     with the City or MSD, rather, to - well, to have the

9     meeting in St. Louis and perhaps work with MSD to do

10    some kind of tour or - or host a field day on

11    January 3rd.

12    CHAIRMAN HERRMANN: Yeah, we had to back out of our

13    commitment with you last time, Susan.

14    MS. MYERS: Okay, so you're looking at

15    January 3rd for the tour?

16    CHAIRMAN HERRMANN: Right, right.

17    MS. MYERS: Okay, like an afternoon tour,

18    you think?

19    CHAIRMAN HERRMANN: Yeah, so the other commissioners

20    that don't live in St. Louis, like me, have to

21    travel some distance to get there.

22    MS. MYERS: Okay.

23    CHAIRMAN HERRMANN: I suggested your very proud of

24    your Lemay Plant and Ed suggested he has seen the -

25    the new South County Plant. Very, very impressive

1 and thought maybe that might be of interest. So  
2 whatever - whatever you think would be an  
3 appropriate and instructive tour, we'd be glad to  
4 participate.

5 MS. MYERS: Okay. I'll coordinate with  
6 you.

7 CHAIRMAN HERRMANN: Do you want to set any of the  
8 others?

9 MR. GALBRAITH: Let's hold - yeah, let's hold those.

10 CHAIRMAN HERRMANN: Okay.

11 MS. MYERS: What location will you use?

12 MR. GALBRAITH: We haven't set it yet.

13 CHAIRMAN HERRMANN: We've been on a South - South  
14 County Holiday Inn, which is the one down on South  
15 Lindbergh.

16 MR. GALBRAITH: Why don't - why don't we plan on  
17 having the March one back here in Jefferson City and  
18 then in January, we can plan our May for the rest of  
19 the year. We'll find a venue for the March meeting.

20 CHAIRMAN HERRMANN: I think if the budget permits,  
21 we ought to do more of these instructive and  
22 educational tour like things and afford access to  
23 the people out in the far corners of the state to  
24 the Commission. What do you got in Owensville  
25 besides a Hardees?



1 COMMISSIONER HARDECKE: Not much. We do have one  
2 restaurant, though, that's open late.

3 CHAIRMAN HERRMANN: Oh, yeah, out on the west end of  
4 town. Okay, anything else to bring before the  
5 Commission? Hearing nothing, we'll declare this  
6 meeting adjourned.

Respectfully Submitted,

Edward Galbraith  
Director of Staff